



Combating Substance Abuse Compels a Pound of Prevention and a Pound of Cure

A Report to the 59th Legislature From the
Children, Families, Health, and Human Services
Interim Committee

Prepared by Susan Byorth Fox
Research Analyst



PO Box 201706
Helena, MT 59620-1706
PHONE: (406) 444-3064
FAX: (406) 444-3036
<http://leg.state.mt.us>

STATE DOCUMENTS COLLECTION

December 2004

JAN 20 2005

MONTANA
1515 E
HELENA

Montana State Library



3 0864 1003 2958 3

Children, Families, Health, and Human Services Interim Committee

Membership and Tenure on Committee

Representative Don Roberts ('03)
Presiding Officer
5414 Walter Hagen Dr
Billings, MT 59106-1007

Senator Jerry O'Neil ('01)
PO Box 2058
Kalispell, MT 59903

Representative Eve Franklin ('99)
Vice Presiding Officer
2707 Dawn Drive
Great Falls, MT 59404

Senator Gerald Pease ('01)
PO Box 556
Lodge Grass MT 59050

Representative Edith Clark ('03)
PO Box 34
Sweetgrass, MT 59484-0034

Senator Trudi Schmidt ('99)
4029 6th Avenue South
Great Falls, MT 59405-3746

Representative Carol Gibson ('03)
3028 Avenue E
Billings, MT 59102

Senator John Esp ('03)
PO Box 1024
Big Timber, MT 59011-1024

Staff

Susan Byorth Fox, Research Analyst
Dawn Field, Secretary
Greg Petesch, Chief Legal Counsel

Legislative Services Division
Room 110, State Capitol
Phone: (406) 444-3064

Digitized by the Internet Archive
in 2010 with funding from
Montana State Library

Acknowledgments

I wish to thank Judge Kenneth O'Neil, Mayor Randy Gray, and Dr. Dan Nauts of Great Falls for their tireless efforts in the war on methamphetamine use and for their assistance in the drafting of the SJR 11 resolution. They and their task force steadfastly provided information and public testimony for the Committee's deliberations. It is their frustration with the effects of methamphetamine on their community and their day-to-day efforts that are fueling the state's activities to combat the devastating effects of methamphetamine on our communities. My hat is off to their efforts and the efforts of all of the folks on the Great Falls Methamphetamine Task Force.

I wish to also thank Vicki Turner of the Prevention Resource Center, Peg Shea of Western Montana Addiction Services, and Roland Mena, first as Bureau Chief of the Chemical Dependency Bureau and later as the Executive Director of the Montana Board of Crime Control, for their assistance and patience in the development of the coordinated statewide leadership proposals. For their assistance in educating the Committee and staff on addiction, treatment, and prevention and in providing creative solutions for the Committee's consideration, I am eternally grateful.

Lastly, I wish to thank Gail Gray as Director of the Department of Public Health and Human Services for her willingness to appear before the Committee and for cheerfully providing information whenever it was requested. Thanks to all of her staff, especially Shirley K. Brown for her assistance with HJR 3 and Maggie Bullock for assistance on SJR 11, and a special thanks to the Addictive and Mental Disorders staff who assisted me in the SJR 11 study: Ken Taylor, Jackie Jandt, and Chuck Michaud and to their new administrators Joan Cassidy and Joyce DeCunzo who jumped right in to help.

Table of Contents

Membership and Staff	i
Acknowledgments	iii
Chapter One	1
Preface	1
Introduction	3
Summary of Committee Recommendations	4
Study Plan and Committee Activities	7
Other Committee Work	11
Administrative Rule Review	12
Monitoring and Program Evaluation	14
Standing reports	14
Mental Health Ombudsman	14
Legislative Fiscal Division staff reports	15
Public health statutes review	15
DPHHS Executive Planning Process legislative proposals	16
DPHHS legislative audit reports	16
Update on mental health issues	16
Service area authorities	17
Role of the existing community mental health centers	17
State Health Planning Grant	18
Emerging Issues	18
Treatment courts	18
TANF benefit cut and surplus	20
CHIP contract and reserves	24
TANF, food stamps, and drug offenders	25
American Massage Therapy Association, Montana Chapter	25
National Association of Social Workers, Montana Chapter	25
Legislative priorities	26
Unregulated youth residential facilities	26
Chapter Two: Committee Interim Study: HJR 3	28
Court Appointed Special Advocate/ Guardian Ad Litem	29
Treatment courts	29
CasCo Project	31

Child Protection Unit in the Department of Justice	31
Recommendations to the Law and Justice Interim Committee	33
HJR 3 stand-alone bill draft request	34
 Chapter Three: Committee Interim Study: SJR 11	 35
Coordinated Statewide Leadership 10/03	36
Prevention programs	36
Preliminary Proposals to Address Coordinated Statewide Leadership	37
Technical assistance from the National Conference of State Legislatures	38
Coordinated Statewide Leadership 4/04	40
Methamphetamine Cleanup Standards	41
Correctional substance abuse treatment programs	42
Coordinated Statewide Leadership 6/04	42
Methamphetamine Summit	44
Coordinated statewide leadership 8/04 and committee recommendations	46
 Chapter 4	 51
Areas for Future Study	51
Legislative Staff Reports and Available Materials	52
Legislative Services Division	52
Legislative Fiscal Division	54
Legislative Audit Division	54
Department of Public Health and Human Services	55
Office of Public Instruction	56
Governor's Office	56
Public Reports	56

Appendices

- Appendix A: LC0294: Office of Substance Abuse and Prevention and
Commissioner
- Appendix B: LC0295: Resolution Supporting Prevention Activities Into the
Next Administration
- Appendix C: Letter of Office of Budget and Program Planning
- Appendix D: List of DPHHS Legislative Proposals
- Appendix E: HJR 3 Recommendations to Law and Justice Interim Committee

Chapter One

Preface

The Children, Families, Health, and Human Services Interim Committee (Committee) spent the interim looking at the effects and costs of substance abuse on our society through two different interim studies.

- Senate Joint Resolution No. 11 directed study of the problems of alcohol and drug abuse and of prevention, early intervention, and treatment.
- House Joint Resolution No. 3 directed a study of representation of parents who are involved in child protective proceedings and are in danger of having their parental rights terminated.

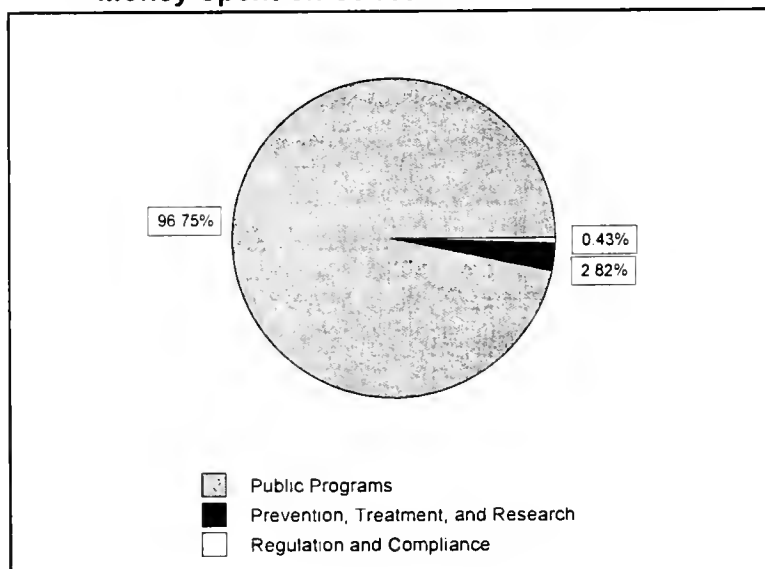
In some ways both studies, although seemingly unrelated on their face, demonstrate the effects of substance abuse. Families involved in child abuse and neglect proceedings often have substance abuse issues at the core of their problems. Methamphetamine use and its devastating effects on individuals, families, and communities has brought substance abuse to the forefront. By all accounts, attempts to deal with the problems at the back end—problems of addiction, criminal behavior, poor or absent parenting, or lab cleanup—are consuming massive amounts of resources with no "cure" in sight.

Families involved in child abuse and neglect proceedings often have substance abuse issues at the core of their problems.

A recent national study evaluated state budgets in 1998 to determine the impact of substance abuse and addiction in 16 budget categories, including health, social

services, criminal justice, education, mental health, and others. On average, of every \$100 that the state of Montana spent on substance abuse in 1998: \$96.75 was spent on public programs, \$2.82 was spent on prevention, treatment, and research, and \$0.43 was spent on regulation and compliance. Recent studies reveal savings of as much as \$23 saved for every \$1 spent on treatment, taking arrests, incarceration, child welfare, social welfare, and Medicaid costs into account.¹

Figure 1. Average Allocation of Every \$100 of State Money Spent on Substance Abuse in 1998



The Committee this interim stepped back and established prevention and treatment as its main topics. It worked on a theme raised by the previous Task Force on Alcohol, Tobacco, and Other Drug Control Policy that recognized the lack of coordinated statewide leadership in this area.² At this point, society does not have

¹From the report: *Shoveling Up: the Impact of Substance Abuse on State Budgets*. National Center on Addiction and Substance Abuse; Columbia University, 2001.

²Alcohol, Tobacco, and Other Drug Control Policy Task Force. *Comprehensive Blueprint for the Future: A Living Document*. September 2002.



the luxury of choosing an ounce of prevention over a pound of cure or vice versa. But if all of government resources are spent on the effects of substance abuse, in essence trying to cure the results, prevention suffers. The Committee's interim work recommends prevention in the form of an Office of Substance Abuse Prevention and Treatment. It also recommends legal representation for parents at the beginning of the child protective process in which the state intervenes on a child's behalf, instead of at the point at which the parents are losing their parental rights. For many of these issues, it will take both a pound of prevention and a pound of cure to tip the balance to preventing and treating the problems, instead of pouring all of the resources into battling the net results of the problems.

Introduction

The Committee is the descendant of the former Joint Oversight Committee on Children and Families. Begun as a study committee authorized by House Joint Resolution No. 54 in 1991, it was continued for a second biennium under a study resolution in 1993 and became a permanent interim committee in 1995 (Ch. 414, L. 1995).

The current interim committee structure was created in 1999 (Senate Bill No. 11, Ch. 19, L. 1999). Senate Bill No. 11 placed responsibility for monitoring each of the Executive Branch agencies under one of the nine interim committees or the Environmental Quality Council. In addition, interim committee duties were reformulated, adding administrative rule review and program evaluation. The monitoring functions for the Department of Public Health and Human Services (DPHHS) and its attached entities were assigned to this Committee (5-5-225, MCA).

In 2001, the Legislature passed Senate Bill No. 10 (Ch. 210) revising interim committee functions to include responsibility for reviewing draft legislation proposed



by state agencies. This function was previously performed by the Legislative Council that, as a courtesy, would request all agency legislation. The change was intended to provide more continuity between the interim and the session by having the committee that is involved in a specific subject area preview the policy concepts that the agencies are proposing. As a courtesy, the Committee acts as the requestor for the legislation, which allows it to be drafted and preintroduced for consideration by the full Legislature in the following legislative session.

Summary of Committee Recommendations

- ① On April 30, 2004, the Committee made its recommendations to the Law and Justice Interim Committee (LJIC) from the HJR 3 study:
 - to consider statutory changes to require appointment of legal counsel for all parents, guardians, or those with legal custody who are involved in child abuse and neglect proceedings at the point in the process that may result in removal or placement of a child or termination of parental rights as a consideration in the development of a public defender system in the state. The Committee also asked the LJIC to consider a family law specialist in the public defender system to assist public defenders in difficult cases, and recommended a background or expertise in family law for those attorneys who are assigned these cases in a public defender system.
 - to consider requesting information from either the State Court Administrator or the DPHHS Child and Family Services Division, in cooperation with the other, to determine the numbers of parents, guardians, and those with legal custody of children who would require legal counsel in removal, placement, and termination proceedings;
 - urging that "indigency" be statutorily defined;



- to consider that an accurate assessment be made of the cost to provide a guardian ad litem to each child alleged to be abused or neglected; to request that additional information on the number of children who may also need legal counsel should be included in any request for additional information; to develop standards for guardians ad litem (changes in the federal level now require training) and specify responsibilities when a public defender is also involved; and although it is outside the scope of this study, to also consider specific staff training for attorneys assigned to child abuse and neglect cases;
- to keep the court-appointed special advocate/guardian ad litem (CASA/GAL) program in the State Court Administrator's Office;
- to support the concepts of "reasonable case loads" and "consistency and continuity" in representation.

② On January 23, 2004, the Committee approved writing a letter to both the DPHHS and to the Governor requesting an Attorney General's opinion on the matter of whether the mental health ombudsman was a health oversight entity and, if the matter was not resolved by an Attorney General's opinion, requesting that the Committee draft legislation to clarify the matter. An Attorney General's opinion was not requested, and legislation was drafted for consideration. The Committee approved draft legislation (LC0144) at the August 27, 2004, meeting to allow the Mental Health Ombudsman to be designated as a health oversight agency and to address related information access issues.

③ At the April 29, 2004, meeting the Committee requested that staff draft legislation for discussion purposes that would remove the prohibition on granting public benefits to felony drug offenders, with some requirements on offenders. The Committee made a formal bill draft request in June 2004 (LC0031) and approved an amended draft at the final August 27, 2004, meeting.



④ The Committee was asked by the Code Commissioner to review a cleanup issue with regard to Montana's Safe Haven Newborn Protection Act. An internal reference remained in statute after a temporary section terminated. If the Committee sponsors the legislation, it can retain references to a person who wishes to surrender an infant contacting the DPHHS and receiving information regarding counseling. The Committee requested a formal bill draft request (LC0145) at the June 2004 meeting and in August adopted the draft and directed that it be coordinated with the Code Commissioner's bill.

⑤ At the June 2004 meeting, the Committee adopted draft legislation (LC0146) to repeal the provisions of Senate Bill No. 473 (Ch. 551), passed in the 2003 Legislature because the DPHHS had abandoned efforts to implement the program because of the implementation of the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003.

⑥ At its final meeting, on August 27, 2004, the Committee made the following recommendations:

- To create an Office of Substance Abuse Prevention and Treatment headed by a Commissioner and attached to the Governor's Office in order to provide coordinated statewide leadership across agencies in the areas of substance abuse prevention and treatment (LC0294). It was recommended that the Commissioner be a cabinet-level position and a member of the Montana Board of Crime Control. The Interagency Coordinating Council on Prevention would be repealed, although the legislation requires the Commissioner to use some form of advisory council. (See Appendix A.)
- To adopt a resolution encouraging the next administration to continue the efforts of this administration and especially the efforts of the Departments of Public Health and Human Services and Corrections to



improve interagency and intra-agency prevention and treatment efforts (LC0295). (See Appendix B.)

- To request through a letter that the Governor's Office of Budget and Program Planning review existing multiple advisory councils in areas related to substance abuse prevention or treatment to explore the possibility of downsizing or consolidating to provide resources to support a Commissioner and the Office of Substance Abuse Prevention and Treatment. (See Appendix C.)

Study Plan and Committee Activities

The first meeting of the 2003-2004 interim was held August 22, 2003, at which time the Committee elected its officers: Representative Don Roberts was elected presiding officer and Representative Eve Franklin was elected vice presiding officer. Committee legal counsel provided an overview of the Committee's administrative rule review responsibilities. Staff presented a list of issues that included assigned interim studies, possible topics derived from the DPHHS structure, 2003 legislative issues, and interested persons' concerns that provided a guide for the activities of the interim. The Committee adopted its interim work plan at the first meeting.

The Committee held a total of two 1-day meetings and four 2-day meetings over the interim, in addition to other meetings that many members attended on behalf of the Committee. Committee minutes and exhibits, including reports, are available on the Committee website or from the Legislative Services Division for each of the following meeting dates:

- August 22, 2003
- October 30 and 31, 2003
- January 22 and 23, 2004
- April 29 and 30, 2004
- June 29 and 30, 2004



- August 27, 2004.

The Committee received a Director's report at each meeting from Gail Gray, Director of the DPHHS or from the Deputy Director, John Chappuis. The Committee received presentations from the DPHHS division administrators when topics of interest arose or in the course of study. The divisions and administrators as of August 2004 were:

- (1) Addictive and Mental Disorders Division - Joyce DeCunzo
- (2) Child and Family Services Division - Shirley Brown
- (3) Child Support Enforcement Division - Lonnie Olson
- (4) Disability Services Division - Joe Mathews
- (5) Public Health and Safety Division (formerly Health Policy and Services Division) - Jane Smilie, Acting Administrator
- (6) Human and Community Services Division - Hank Hudson
- (7) Operations and Technology Division - Mike Billings
- (8) Quality Assurance Division - Mary Dalton
- (9) Senior and Long Term Care Division - Kelly Williams
- (10) Child and Adult Health Resources Division (new, including children's mental health, children's special health, CHIP, and primary care Medicaid services) - Chuck Hunter
- (11) Office of Planning, Coordination, and Analysis - (formerly Office of Program Finance) - Gail Briese-Zimmer

Interim studies that were assigned or of interest to the Committee were:

- House Joint Resolution No. 3: an interim study to examine child abuse and neglect proceedings in order to determine how to provide representation for indigent families and to determine the appropriate earliest opportunity for representation.

House Joint Resolution No. 3 was requested by the 2001-2002 Children, Families, Health, and Human Services Interim Committee after receiving information regarding the child abuse and neglect system, including the suggestion of appointment of legal counsel for parents early on in the process. Additional information was provided in the October 2002 legislative



performance audit on the Child and Family Services Division. A recommendation was not offered, but the audit noted that there was statewide variation in whether indigent parents received legal representation in child abuse and neglect proceedings prior to termination of parental rights. The Legislative Council assigned this study to the Committee.

- Senate Joint Resolution No. 11 directed the Committee to:
 - (1) review the progress made by the Governor's and Attorney General's Alcohol, Tobacco, and Other Drug Control Policy Task Force and proposals enacted by the 58th Legislature; and
 - (2) continue to identify the issues and to develop proposals for a coordinated, cooperative effort by federal, state, and local levels of government and the private sector to implement prevention and early intervention efforts, to develop and use alternatives to incarceration, and to provide appropriate treatment opportunities at the most effective time and in the most cost-effective and efficient manner.

Senate Joint Resolution No 11 was passed during the 2003 Legislature, ranked sixth in priority for interim studies, and assigned to the Committee by the Legislative Council. SJR 11 proposed a study of the problems of alcohol and drug abuse and prevention, early intervention, and treatment. The study was intended to continue the efforts of the Alcohol, Tobacco, and Other Drug Control Policy Task Force (2001-2002).

- House Joint Resolution No. 13: requesting that the Department of Public Health and Human Services conduct a study regarding the health programs administered by the department and provide a report to the 59th Legislature outlining options that may be undertaken to redesign the health programs administered by the department.

The effort was known as "Medicaid redesign." The DPHHS created the Public Health Care Advisory Council composed of representatives from the public, Medicaid consumers, representatives from hospitals, health insurance providers, physicians, and legislators. Members of the Committee who served

on this Council included Representative Edith Clark and Senator Trudi Schmidt. Other legislators who served included Senator Bob Keenan, Representative Dan Hurwitz, and Representative Jonathan Windy Boy. The Committee received regular reports from the DPHHS Director and members of the Committee, as well as analyses on the efforts from the staff of the Legislative Fiscal Division.

The Council made 18 recommendations in the following categories:

- (1) Recommendations 1 through 4 have already been fully adopted by the department and are being integrated into the current operations. These include recommendations to define fundamental values, principles, and goals, incorporate funding priorities, implement management principles, and establish reimbursement principles.
- (2) Recommendations 5 through 10 involve adjustments or refocusing of existing programs and do not require legislation or changes in funding. These include recommendations to maximize Medicaid third-party liability, implement a Medicaid field eligibility review, implement a community health center demonstration project, develop a strategic plan for adult mental health services, develop a long-term care education plan, and participate in a health education program.
- (3) The remaining recommendations, 11 through 18, require action by the state Legislature and/or federal government. While the department can begin the process of developing appropriate legislative language and begin preliminary negotiation with the federal agencies, actual implementation of the recommendations will not occur until after the 2005 Legislative Session or final approval by the federal government, or both. These include recommendations to improve services for seriously emotionally disturbed children, submit a health insurance flexibility and accountability waiver, initiate changes in Medicaid eligibility, seek tribal exemption, implement pharmacy cost containment, develop a transportation brokerage system, and seek codifying legislation.



The DPHHS submitted several bill draft proposals to the Committee to implement the Medicaid redesign for which the Committee submitted requests for legislation for consideration during the 2005 Legislature. (See Appendix D.)

Other Committee Work

Legislators from the Committee served in many capacities on other related committees:

Representative Don Roberts:

- ▶ SJR 22 interim study on medical liability insurance.

Representative Edith Clark:

- ▶ Public Health Advisory Council,
- ▶ Developmental Disabilities Planning Council,
- ▶ Child and Family Services Advisory Council,
- ▶ Montana Health Coalition Advisory Board.

Representative Eve Franklin:

- ▶ Montana Faith Health Cooperative Demonstration Project Grant Review Committee

Senator Trudi Schmidt:

- ▶ Public Health Advisory Council,
- ▶ State Family Services Advisory Council.

Senator Gerald Pease:

State-Tribal Relations Interim Committee

Senator John Esp:

- ▶ Montana Tobacco Use Prevention Program Advisory Council,
- ▶ Chronic Disease Advisory Council, Mental Health Oversight Advisory Committee,

- ▶ Legislative Audit Committee,
- ▶ Montana team member to the Center for Health Transformation.
- ▶ Senator Esp also attended the Centers for Disease Control and Prevention Public Health Law Conference in Atlanta, Georgia, 2004, the ALEC Annual Policy Summit in Phoenix, 2003, and the National Conference of State Legislatures Annual Meeting in Salt Lake City, 2004.

Senator Trudi Schmidt, Committee staff, and other Montana and DPHHS representatives participated as a part of a Montana delegation to a Center for Substance Abuse and Treatment Conference on Methamphetamine and Marijuana Abuse and Treatment in Boise, Idaho, in February of 2004. The group learned about addictions, successful programs, and federal funding sources.

Research staff also attended a "Resources for Recovery: State Practices that Expand Treatment Opportunities" meeting in Arizona, sponsored by The Robert Wood Johnson Foundation, with representatives from the DPHHS and the Governor's Budget Office.

Committee staff also created and maintained a website for the Committee at [http://leg.state.mt.us under Committees>Interim>Children, Families, Health, and Human Services](http://leg.state.mt.us/under/Committees/Interim/Children,Families,Health,andHumanServices) that provides access to agendas, minutes, staff reports, and other information about Committee activities. Relevant information from this and past interims is available.

Administrative Rule Review

The Legislative Services Division legal staff reviews all DPHHS rulemaking notices regarding the proposal or adoption of a new rule or an amendment to a rule—a duty that remains the same in method, timing, purpose, and review of legality as it did for



the former Administrative Code Committee. The review is triggered by the submission of a notice to the Secretary of State by a state agency of a proposal for adoption, amendment, or repeal of an administrative rule. After a public hearing is held (if any) and public comments are considered, a notice of adoption of the rule is published and the rule becomes effective. The purpose of the legal staff review is to determine if the Montana Administrative Procedure Act and other statutes were followed. The agency determines legislative intent by the language of the statute, which may or may not include a statement of purpose, by speaking to the prime sponsor and from other public comments. The Committee legal staff reviews only the proposed rule and the enabling statutes. The review is intended to catch legal errors, but it is not intended to judge the merit of the idea or other possible interpretations of intent by individual legislators.

The Committee asked its legal staff to advise the members of any major issues pertaining to administrative rules and remained open to the possibility of any issues raised by the public regarding administrative rules. The legal counsel for this interim was Greg Petesch, Chief Legal Counsel of the Legislative Services Division. He reported to the Committee that the DPHHS had accepted all of his comments in his rule reviews. At the August 27, 2004, meeting, he reported a significant administrative rule issue considered by the Committee regarding three rules on the substantiation of child abuse. He determined that the DPHHS did not have sufficient statutory authority to create levels of substantiation and could create only levels of response. There is also no statutory authority to defer substantiation or to not disclose a substantiated report in a blanket exclusion as the rule attempts to engraft conditions on a disclosure that were not contemplated by the Legislature. The Committee supported the general concept behind the rules as proposed, but asked the DPHHS to accept the Committee legal counsel's comments and to make the necessary changes to the rules prior to adoption. The Committee requested that if

the DPHHS was unable to do so, statutory authority should be sought by the DPHHS and the rules should be abandoned.

Monitoring and Program Evaluation

In its role of monitoring the DPHHS, the Committee received **standing reports** regularly from the DPHHS administration:

- ▶ Gail Gray, Director, gave a regular report on budget issues, Medicaid and TANF, Medicaid redesign, and recent events.
- ▶ The Child and Family Services Division Administrator Shirley K. Brown participated in the Committee meetings on the HJR 3 study.
- ▶ The Human and Community Services Division Administrator Hank Hudson provided regular reports on the TANF block grant, maintenance of effort, and unexpended funds.

The **Mental Health Ombudsman**, in a regular report to the Committee, expressed concern regarding access to information at the DPHHS that was needed to perform ombudsman functions. Initially, it appeared to be a Health Insurance Portability and Accountability Act (HIPAA) issue, but upon further investigation, there were also issues with the Medicaid information system access that were raised because of a recent Centers for Medicaid and Medicare Services (CMS) audit. The Committee directed its staff to prepare draft legislation for discussion at the June meeting to deal with the HIPAA issue, the CMS issue, and other confidentiality issues. At the June 29, 2004, meeting, the Committee submitted an official bill draft request (LC0144) on access to information and confidentiality. At the August 27, 2004, meeting, the Ombudsman informed the Committee that the internal DPHHS issues would be handled between the DPHHS and the Ombudsman (attached to the Governor's Office) through a Memorandum of Understanding. However, the Committee believed that there was more to the bill than would be covered by the memorandum and adopted an amended bill draft. The Committee included language in the bill to



provide greater legal basis for access to the Medicaid database. However, the Committee was aware that access to the Medicaid database would probably not be granted by the DPHHS or the CMS and that the DPHHS internal processes would allow the information to be sent to the Ombudsman on a timely basis after patient authorization was received.

Legislative Fiscal Division Staff Reports - Pat Gervais and Lois Steinbeck, Senior Fiscal Analysts, provided regular reports to the Committee on issues that were of concern to the Legislative Finance Committee regarding the DPHHS, including Temporary Assistance to Needy Families (TANF), Medicaid redesign and the Mental Health Services Plan, the settlement of the Travis D. litigation and its potential cross-system impacts and implications, emerging issues in the developmental disabilities program, and revisiting the definition of Medicaid managed care.

At the Committee's final meeting on August 27, 2004, the members heard of the recent efforts by the DPHHS Public Health and Safety Division regarding the **public health statutes review**. Dr. Larry Gostin of The Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities has been working with the DPHHS and has made a comparison of Montana's public health statutes, many of which are over 60 years old, to the Model Public Health Law. A DPHHS bill draft was prepared based on that effort, and the public health community will be deciding how many of the recommendations to bring forward to the 2005 Legislative Session. The recommendations are in five basic areas: defining a mission statement, defining public health powers, defining standards for conditions of public health importance, codifying due process protections for citizens in public health emergencies, and providing a clear understanding of responsibilities for planning and preparedness for any kind of emergency. The Committee encouraged the DPHHS to bring forward a bill covering all five areas of concern for debate before the Legislature.

In order to prepare for the 59th Legislative Session, the Committee heard overviews of the **DPHHS Executive Planning Process legislative proposals** and the Committee requested the agency bill drafts on behalf of the DPHHS at the June 29 and the August 27, 2004, meetings based on a cursory overview of concepts. (See Appendix D.) The review and the request processes do not indicate approval of any of the proposed concepts, only an administrative courtesy to expedite bill drafting.

The Committee received information and presentations on the following activities:

- The Committee received regular listings of **DPHHS legislative audit reports** completed by the Legislative Audit Division. A report was received in January 2004 on the recent financial compliance audit and information system audit. The DPHHS had improved its system controls since the previous audit.
- In January 2004, the Committee received an **update on mental health issues**:
 - (1) The Montana Children's Initiative Provider Association reported on the work of the multiagency children's initiative (i.e., high-cost kids study) and the progress made in children's mental health (Senate Bill No. 454, Ch. 416, L. 2001, and Senate Bill No. 94, Ch. 118, L. 2003). The initiative concentrated on children in the custody of the Child and Family Services Division, and the Committee was provided an executive summary in which phase one of the initiative was discussed and the objectives for phases two and three were outlined.
 - (2) The Committee received a report on the "new" DPHHS division that has combined children's mental health and Medicaid programs. The Legislature had given numerous directives to the DPHHS that the new division administrator was attempting to rectify. Senate Bill No. 347 (Ch. 602, L. 2003) directed the



DPHHS to address both the child and adult mental health systems in its plan, but House Bill No. 2, the general appropriations act, incorporated department recommendations to separate the administration of children's mental health programs from the division that administers adult mental health programs. The new Child and Adult Health Resources Division will pursue the systems of care as provided in Senate Bill No. 94 (Ch. 118, L. 2003) and ask the 2005 Legislature to address the language from Senate Bill No. 347 and remove the requirement for planning children's services from the service area authority concept for adult mental health.

- (3) The Committee received reports on requirements of Senate Bill No. 347 from the DPHHS Addictive and Mental Disorders Division (see next item).
- The Addictive and Mental Disorders Division was required by Senate Bill No. 347 to develop a plan and report to the Committee by January 31, 2004, on the transition to the administration of the delivery of public mental health services by **service area authorities** (SAA). The DPHHS presented its SAA Implementation Plan to the Committee members. The DPHHS took a different tack and is not expecting the SAAs to accept any risk at this point. The Central Region SAA planning group is the most active and furthest ahead. They were seeking their nonprofit status in early 2004.
 - Senate Bill No. 347 required the DPHHS by June 1, 2004, to define the **role of the existing community mental health centers** as a part of the transition plan. If the role includes any special designation, the DPHHS shall define the special designation and the reasons for any special designation. The DPHHS reported to the Committee at its June 2004 meeting that the DPHHS was not seeking any special designation, but was continuing the dialogue with community mental health centers, county commissioners, and other mental health providers and stated that there may be a proposal brought to the next Legislature by others.

- At the June 29, 2004, meeting, the Committee received a comprehensive overview of the results of the **State Health Planning Grant** that studied the issue of the uninsured in the state of Montana. The DPHHS contracted with the University of Montana's Bureau of Business and Economic Research to conduct two surveys: the Montana Household and the Montana Employer surveys. The contractor also collected additional information through focus groups and key informant interviews. The results reported that overall 19% of Montanans, or approximately 173,000 people, were uninsured at the time of the 2003 Montana Household Survey. Health insurance rates vary considerably by age. The survey found that children in Montana who are 18 years of age and younger have an uninsured rate of 17%. For young adults between the ages of 19 and 25 years, the uninsured rate is 39%. The age group of 26 to 49 year olds has a 24% uninsured rate, while older Montanans between the ages of 50 and 64 have an uninsured rate of 14%. (Montanans 65 years of age and older receive health coverage under the federal Medicare program.)

The State Health Planning Grant Steering Committee made recommendations to DPHHS ranging from those with no significant fiscal impact, such as recommending that proof of insurance be required for full-time students attending units in the Montana University System, to those requiring state funding, such as fully enrolling those eligible for Medicaid and CHIP, increasing CHIP eligibility to up to 200% of the federal poverty level, and exploring a prescription drug benefit. Several recommendations such as supporting the health insurance flexibility and accountability waiver concert were forwarded to the DPHHS Public Health Care Advisory Council (see page 10).

Emerging Issues

Treatment courts. The Committee heard regularly about treatment courts, also called drug courts or problem-solving courts, as a relevant topic in both interim



studies on representation of parents in child abuse and neglect proceedings (HJR 3) and in drug abuse prevention, intervention, treatment, and control (SJR 11). Some Committee members had attended treatment court proceedings to observe and learn. Treatment courts have been started across the state by District Court Judges and tribal and local governments and have met with great success. There is no statutory authority necessary for these alternative problem-solving courts because the Montana indeterminate sentencing structure allows for sufficient judicial discretion.

There is no specific state funding for treatment courts either; although funds for public defenders, treatment, and other public services have been accessed by the treatment teams. Many treatment courts have been funded through federal startup grants and county funds and are reaching a point where they may need to request state funding. There is a treatment court coalition of programs across the state including family treatment courts that deal with child abuse and neglect or dependency cases, juvenile drug courts, tribal youth wellness courts, adult criminal drug court, and a mental health court (see pages 29-31). The Montana Board of Crime Control is assisting the coalition and has applied for a federal statewide planning grant. Although there are no legislative proposals forthcoming from the coalition, the Judiciary, or the Committee at this time, there is great interest in and support for their efforts.

Testimony indicated that because of the potential savings in public funds through programs that reunite

Testimony indicated that because of the potential savings in public funds through programs that reunite parents and children, treat addictions, and reduce or prevent incarceration, there is a need for coordination of funding for treatment courts from the various areas that are impacted.

parents and children, treat addictions, and reduce or prevent incarceration, there is a need for coordination of funding for treatment courts from the various areas that are impacted. Also, there is need for a nonadversarial, comprehensive collaboration among systems: judiciary, child welfare, treatment, and community representatives. Treatment court programs use intense supervision and have lower that recidivism compared to average recidivism. National research indicated that recidivism in some programs can be as low as 10%, with an average of 28%, compared to a recidivism rate of 48% for offenders processed through the regular court system. Substance abuse cases can cost approximately \$20,000 to \$50,000 for each case compared to treatment courts cost of \$2,500 to \$4,000 per case.³

TANF benefit cut and surplus. In August of 2003, the DPHHS instituted a cut in the TANF benefits based on proposals to and decisions made by the 58th Legislature (2003). Advocates for TANF beneficiaries and DPHHS staff kept this issue in front of the Committee at each meeting. In January of 2004, testimony was received that the TANF benefit cuts were having a negative impact on very vulnerable families, including a rise in demand for services from homeless shelters, food banks, and local groups that provide assistance, such as Energy Share and the Low-Income Energy Assistance Program. Advocates testified that housing is critical to success, that the cuts are resulting in some unsafe living conditions, and that stresses on clients' mental health are being seen. Advocates commented that public assistance is often used to extricate a victim from domestic violence and that finances are often used by abusers to control the victim in a domestic violence situation. TANF benefit changes make it harder to get benefits and be self-sufficient enough to find a safe domestic situation. Advocates wanted the DPHHS to use some of the surplus that has been saved through cuts and the lower caseload numbers, as well as the performance

³ Testimony received from Ellen Greenwood, Missoula, at the August 27, 2004, Committee meeting (minutes available).



bonus that the DPHHS received from the federal government. The DPHHS staff said that it had to cut the amount of the benefits or risk more dramatic cuts later when the money ran out. DPHHS staff also reported that placing the additional money in childcare assistance is the area that the DPHHS and the Legislature decided to concentrate on.

In April 2004, the DPHHS provided background information regarding the TANF benefit cut:

- During the 2003 Legislature, it became apparent that the TANF caseload benefit level would become unsustainable within the block grant and that a lack of childcare funding was requiring that people who wanted to work would be placed on a waiting list for childcare assistance.
- In August 2003, the Executive Branch decided to reduce the TANF benefit level by approximately 26% and to move \$3 million of the savings into the childcare program.

Legislators and DPHHS staff hoped that the availability of childcare would discourage some of the growth in the TANF caseload and that the caseload would eventually balance out at a sustainable level. The TANF caseload, through February of 2004, dropped and stabilized. The DPHHS staff believed that from a public policy perspective, the program had enough money to provide childcare with no waiting list and that the caseload had stabilized at a sustainable level. The DPHHS recognized that the reduction did create hardships for people, which prompted a TANF recipient survey conducted by MSU-Billings (Floyd, 2004).

- The research indicated that those who left the TANF program were better off than those who stayed on. Those who left TANF worked more hours, had a greater increase in earnings, and reported fewer difficulties from the reductions in benefits.



- The people with fewer options and with more difficulties and barriers stayed in the program and continue to report difficulties paying utility bills and affording food and rent, etc.
- Two groups were contacted: 175 people who were on TANF when the benefit was reduced and who were still on TANF a month after the reductions and another group of 176 people who, when their benefits were reduced, dropped out of the TANF program.

Advocates provided public comment regarding the TANF survey:

- The reduction in TANF benefits affected 2,000 children.
- Families are breaking up because they can't afford to stay together, particularly single mothers and their children.
- Domestic violence is a factor in at least 30% of the TANF caseload. There is something fundamentally flawed in this survey when it says that none of the people went on TANF due to domestic violence. It is very unlikely that individuals would be willing to share this type of information with a stranger on the phone. When benefits are reduced, options are reduced as well.
- Representatives from Women's Opportunity and Resource Development (WORD), Missoula, asked the Committee to ask the DPHHS if there are other resources that could be used, and the request had not yet been responded to. WORD would like to see the surplus, the performance bonus, and the fiscal stimulus money considered as possible funding sources to restore the benefit.
- WORD had also requested that the DPHHS use advocates to conduct the TANF survey and was disappointed by the survey results because the use of advocates would have given a very different picture.
- The methodology of the survey is questionable. WORD feels that a 22% response rate is not acceptable to reflect the circumstances of all TANF recipients.
- The people able to be reached by telephone are the more employable people, so no one should be surprised by the results (113 disconnected telephones).



- The employment and wages information does not indicate a significant change from before the benefit cut.
- The wording of the actual survey would prevent most respondents from being truthful regarding any questionable activity. Advocates would have been able to draw out more accurate information.
- At the same time that the TANF benefit was cut, the level of child poverty increased in the state. The goal of the program should be to create sustainability in children's lives.
- Representatives from Working for Equality and Economic Liberation (WEEL) believe it is good public policy to invest in children. A lower TANF caseload reflects numbers of people served, mainly children. The benefit cut has not reduced poverty and is no solution.
- The Advisory Council for Public Assistance urged that the TANF ending fund balance of \$17.5 million, as indicated in the block grant analysis from the DPHHS, be used to alleviate the problems.

At the Committee's August 27, 2004, final meeting, advocates were still concerned that there had been no proposals to use the approximate \$22 million surplus to increase the TANF benefit and that the areas that the DPHHS was targeting for additional money were not specifically assisting the TANF-eligible families and children (additional money to food banks would be for anyone, not just TANF-eligible individuals). They noted that the Census Bureau reported that poverty in Montana is higher in 2003 than 2002, especially among children in single-parent households. The TANF rolls are decreasing at a time when poverty is increasing. The advocates wanted additional funding in housing assistance programs and provided information from a successful program operated in Missoula called homeWORD and invited the Committee to the opening of housing for low-income people in Billings.

Advocates noted that the Census Bureau reported that poverty in Montana is higher in 2003 than 2002, especially among children in single-parent households.

The DPHHS responded that it has not finished developing its proposals. The DPHHS agreed that housing was key in many areas and that it needed attention. The DPHHS was looking at allocating more money for training and childcare needs and noted that food banks need additional support to assist the higher numbers of individuals in need. The DPHHS will be proposing a small (\$1-2 million) increase in benefits to the Governor. They are working with their advisory group looking at incentives for GED, etc. The Director agreed that a TANF reserve of \$10 million to \$12 million was not an unrealistic number. The Director also cautioned that a decrease in the federal matching rate (FMAP) could also reduce the amount available for the TANF program (a 1% decrease in FMAP is over \$5 million). A Committee member commented that the economy was not as strong in 2003 as before and that the TANF decrease did not cause the higher poverty levels.

CHIP contract and reserves. At the August 27, 2004, meeting, the Committee inquired about issues that had recently been raised about the state CHIP program. There is a concern regarding the disparity between the percentage of administrative costs that federal law allows for a state CHIP program and the amount of administrative costs that are currently allowed in the contract with Blue Cross Blue Shield. Other concerns regard the amount of reserves that has been retained by Blue Cross Blue Shield, especially in light of the last premium increase granted. There is also a concern over the portion of CHIP money that was used to fund the Caring Program for Children. The DPHHS reported that they were in formal negotiations with Blue Cross Blue Shield over the contract. The DPHHS proposed that it receive a portion of the money held in reserve, discussed the percentage of



administrative costs, and is addressing proposals by Blue Cross Blue Shield regarding the need for premium increases. The DPHHS believes that Blue Cross Blue Shield is seriously considering assisting the DPHHS in achieving the departmental goals.

TANF, food stamps, and drug offenders. At the April 2004 meeting, Minkie Medora of the Montana Food Policy Council requested a repeal of the exclusion in 53-4-231, MCA, that prohibits drug offenders from receiving food stamps and TANF benefits—an exclusion that was implemented after federal welfare reform in 1996. The repeal of the exclusion had been a recommendation from the Task Force on Alcohol, Tobacco, and Other Drug Policy and had not been successful. The Committee worked on draft legislation, patterned after the 2001 legislation (SB 77, as introduced), that was less restrictive but maintains some conditions for receipt of benefits and ensures that all offenders under supervision, not only on probation and parole, would be included. An amended final bill draft (LC0031) was approved at the August 2004 meeting. (See staff report, "Public Assistance Benefits and Felony Offenders", March 2004, on file).

At the January 2004 meeting, the **American Massage Therapy Association, Montana Chapter**, spoke to the Committee about exploring the option of bringing a new proposal regarding licensure before the next Legislature. There was an unsuccessful attempt in 2003, and the members were working hard with all parties to resolve differences before they would bring a proposal forward.

The **National Association of Social Workers, Montana Chapter**, came before the Committee with information about a multitiered licensure bill that would be proposed in the 2005 Legislative Session. The bill would add the responsibilities to the current board that licenses professional clinical social workers and would add licenses for a

bachelor-level social worker and a master's-level social worker in nonclinical settings. (This has potential impact on the Child and Family Services Division, which has "community social workers" for child protective services who are not required by law or the DPHHS to be licensed.)

Legislative priorities that will be brought to the 2005 Legislature by various advocacy groups include:

- addressing the significant negative impact of the August 2003 TANF benefit cuts and restoration of TANF benefits;
- legislation regarding payday loans and protection from predatory lending for vulnerable families;
- providing a fair share tax menu from the Montana Fair Share Network;
- securing a funding source for the At-Home Infant Care Program;
- securing funding for childcare payment assistance and children's health care services for low-income working families;
- seeking enhanced authority for DPHHS to ensure that the childcare licensing entity can close illegally operating facilities; and
- seeking support for a school readiness or prekindergarten initiative.

The DPHHS brought the issue of **unregulated youth residential facilities** or programs to the Committee's attention. Many of these programs are privately funded programs for challenging youth, and many have a wilderness component. Currently, unless an "outdoor behavioral program" accepts public funds, Montana does not require the program to be licensed (HB 524, Ch. 348, L. 2003, at 50-5-220, MCA). The Committee received a written report from the DPHHS entitled, "Unregulated Youth Residential Care Programs In Montana" outlining the issue and was apprised of a listening tour that DPHHS representatives held in Great Falls and Kalispell in July 2004. Representatives from many of the programs provided public comment and opposed mandatory licensure at this time, but supported mandatory registration. They wanted to be able to participate in any study to develop licensure and to make sure that any licensure is appropriate to the various types of programs that exist and



is not overly cumbersome. The industry stated that there was a significant economic impact in the state in a nonextractive industry that the state would not want to lose.

The DPHHS had requested a placeholder for potential legislation (LC0289) and proposed that they bring mandatory registration forward for the 2005 Legislature to consider. In the bill, the DPHHS staff proposes to incorporate a study for mandatory licensure for the 2007 Legislature. The Committee expressed concern that these youth are a vulnerable population and that the youth need to be protected. However, the Committee was reluctant to pursue mandatory licensure at this time. Many other states have licensure and many of the services that these programs provide must already be licensed. An additional impact to be considered is the impact on some public school districts as many of these youth attend the public schools. Most youth are from out-of-state, and their parents may not be contributing tuition to the schools. The need to balance a youth's right to (and need for) a quality education in Montana with out-of-state parents' responsibility to participate in the costs means that tuition arrangements or other ways to reimburse the state should be explored.



Chapter Two: Committee Interim Study: HJR 3

House Joint Resolution No. 3 - A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim committee study to examine child abuse and neglect proceedings in order to determine how to provide representation for indigent families and to determine the appropriate earliest opportunity.

This resolution had been requested by the 2001-2002 Children, Families, Health, and Human Services Interim Committee in response to recommendations by DPHHS staff and a legislative audit report. The Legislative Council assigned this study to the Committee. The Committee staff provided a history and a proposed study outline at its August 22, 2003, meeting. The DPHHS provided information that there was great statewide variation in the appointment of counsel for parents in child abuse and neglect proceedings.

As of January 2003, of 22 judicial districts in Montana, judges in:

- seven Judicial Districts appoint parental representation at the initiation of a child abuse and neglect proceeding;
- another seven Judicial Districts appoint representation at the time of termination of parental rights, as required by statute, (there is an exception to this statute under the Indian Child Welfare Act, which requires parental representation to be appointed at the onset of proceedings);
- two Judicial Districts provide counsel at adjudication and one district provide counsel on a case-by-case basis; and
- five Judicial Districts are judges in multicounty jurisdictions so it depends on which county a parent lives in as to when parental representation is appointed.



Five of the nine most populated counties appoint at initiation (Yellowstone, Missoula, Lewis and Clark, Gallatin, and Ravalli Counties) and Cascade County appoints on a case-by-case basis.

At its October 31, 2003, meeting, the Committee received a background report and adopted a study plan. The study plan included information on the background and history of this issue, a description of the child abuse and neglect proceedings process, and legal requirements.

The Committee also received a presentation on the **Court Appointed Special Advocate/ Guardian Ad Litem (CASA/GAL) programs** in Montana. There are various models represented across the state, but a guardian ad litem is required by state and federal law to be provided for each child alleged to be abused or neglected. Court-appointed special advocates are often appointed as guardians ad litem. Court-appointed special advocates are volunteers who are appointed by the District Court Judge to follow a child throughout the proceedings, to conduct investigations, and to make recommendations to the court.

At its January 23, 2004, meeting, the Committee looked at the child abuse and neglect and court proceedings in greater depth. The Committee received information on all of the **treatment courts**, or problem-solving courts, in Montana (see also page 20). At that time, there were Youth Drug Courts in Missoula and Superior, the Bozeman Adult Drug Court, the Yellowstone County Family Treatment Drug Court, Lewistown and Miles City

There are various models represented across the state, but a guardian ad litem is required by state and federal law to be provided for each child alleged to be abused or neglected.



Family Treatment Courts, and Youth Wellness Courts at the Fort Peck, Northern Cheyenne, and Blackfeet Reservations.

Evaluation studies are being conducted by Brenda Roche, Ph.D., who shared information on the success of the various programs with the Committee. Data from the Yellowstone County Family Treatment Drug Court indicated that employment of the participants has risen from 38.5% to 81.8% at the 12-month followup. The participants with no substance abuse in the last month at the 12-month followup was also 81.8%, up from a mere 1% at intake. Child outcome data was measured by the "time in care" for children. The Yellowstone County Family Treatment Drug Court's child participants averaged 340 days in care compared to a control group who experienced an average of 1,065 days in care. The number of children reunified with their parents was 39.5% in the program compared to the comparison group's rate of 20.6%.⁴

Figure 2. Results of Participation in Yellowstone County Family Drug Treatment Court

	At Intake	At 12 Months
Employment Rate	38.5%	81.8%
Rate of No Substance Abuse	1.0%	81.8%
Control Group vs. Treatment Participants		
	Control Group	Treatment Participants
Days in Care	1,065 days	340 days
Rate of Children Reunified With Parents	20.6%	39.5%

Connie Camino, the public defender who participates on the Yellowstone County Family Treatment Drug Court Team, testified that the parents involved in these

⁴Other outcome data is available in the January 23, 2004, Committee Minutes, Exhibit #4.



processes are generally very young, poorly educated, angry, distrusting, afraid, and in need of an advocate. Judges are cautious, and children are frequently removed from the home, exacerbating the parent's negative experience in the system. Many parents can regain custody of their children with proper assistance and services that are provided through the drug court and that otherwise may not be available outside of the drug court. Yellowstone County contracts with five private attorneys to represent all parents in child abuse and neglect proceedings, and they are appointed at the initial proceedings. One of the public defenders, Connie Camino, handles the cases involved in the treatment drug court.

The committee received information on the **CasCo Project** sponsored by the Cascade County Law Clinic. The project provides parent education to parents who have had child abuse and neglect proceedings initiated against them. The public defender and county attorney offices refer parents to the clinic staff who assists parents in understanding what is happening to them and in fulfilling the necessary steps to reunification with their children. If a parent appears to be unsuccessful and heading toward the termination of parental rights, this program refers the parent to the public defender for representation.

The Committee also learned about the **Child Protection Unit in the Department of Justice** that assists county attorneys, upon request, in the prosecution of child abuse and neglect cases that are complex. The unit was thought to be a possible model for a special unit of defense attorneys who could assist public defenders across the state in providing effective counsel to parents. Testimony indicated that the Child Protection Unit was in full support of having attorneys appointed for parents from the outset and that there was no downside. The Committee received a legal analysis from Committee counsel on the Supreme Court's rulings on parental rights.

The Committee also received testimony and other information that supported the concept of early and quality representation for parents in child abuse and neglect proceedings. The treatment courts provided defense counsel at the outset and found that there was a better understanding between all parties when the parents understood their rights and their responsibilities in the system. The purpose of child protective services is to protect the best interests of the child. Quicker resolution protects the best interests of the child, either through family reunification or by providing a permanent home for the child after termination of parental rights.

The Committee also received testimony and other information that supported the concept of early and quality representation for parents in child abuse and neglect proceedings.

The Committee also heard from parents who believed strongly that not only an earlier assignment of a public defender, but also more effective counsel, would have helped them to reunify their family and to protect their rights. The Committee received public testimony at each meeting from concerned citizens who have had negative experiences in the child protective services system. Many offered to allow the members access to their confidential files. Many also requested an investigation into the DPHHS's practices. Although the Committee's authority did not extend into this area, they accepted public comment at every meeting and considered the information in their deliberations.

The House Joint Resolution No. 3 study occurred concurrently with a study by the Law and Justice Interim Committee on the advisability of establishing a statewide system of public defense for the indigent. Because the issue of representation for parents in child abuse and neglect proceedings is a subset of a wider indigent defense issue, the Children and Families Interim Committee forwarded its



recommendations to the Law and Justice Interim Committee in April 2004 for incorporation into any recommendations for or legislation establishing a statewide indigent defense system. (See Appendix E.) The Committee's primary recommendations were:

- that the Law and Justice Interim Committee consider statutory changes to require appointment of legal counsel for all parents, guardians, or those with legal custody who are involved in child abuse and neglect proceedings that may result in removal or placement of a child or termination of parental rights as a part of that Committee's consideration in the development of a public defender system in the state; and
- that the Law and Justice Interim Committee consider including a family law specialist in the public defender system to assist public defenders in difficult cases and consider a background or expertise in family law for those who are assigned these cases in a public defender system.

At the June 29, 2004, meeting of the Committee, the Law and Justice Interim Committee staff reported that a Law and Justice subcommittee:

- had formed a recommendation to provide for appointment of counsel at the beginning of any proceeding that may result in the termination of parental rights;
- was considering how to provide for a state family law specialist, possibly in the form of a Chief Public Defender for the state who would have authority to assign or hire specialty attorneys for certain cases;
- had taken no action on requesting additional data from the State Court Administrator or the DPHHS on numbers of parents involved;
- was working on a statutory definition of indigency;
- was making a consideration that even if a family is not economically indigent, there may be other reasons why counsel may need to be assigned;

- agreed that the guardian ad litem program should stay at the Court Administrator's Office; and
- intended to include as a state cost public defense participation in the drug court treatment teams.

By August 2004, the Law and Justice Interim Committee had incorporated a requirement for parents to receive representation early in the process as recommended in the second discussion draft (August 30, 2004) of LC0214 and incorporated additional Committee recommendations that the court-appointed special advocate and guardian ad litem program continue to be administered through the State Court Administrator's Office and that public defender participation on drug court teams be an allowable state expense. An attorney who is both appointed as a public defender and wishes to serve as a court-appointed special advocate may do so if there is no conflict of interest.

The Committee also requested a **stand-alone bill** (LC0296) for the recommendations for counsel to be appointed for parents in the initial proceedings in a child abuse and neglect case that parallels the Law and Justice Interim Committee bill as a backup in the event that the statewide public defender system legislation fails or relevant sections are deleted.



Chapter Three: Committee Interim Study: SJR 11

Senate Joint Resolution No. 11 - A Joint Resolution of the Senate and the House of Representatives of the State of Montana to request a study of the problems of alcohol and drug abuse and of prevention, early intervention, and treatment.

This study was intended to continue the work that had been initiated in 2001 by the Governor and the Attorney General with the Task Force on Alcohol, Tobacco, and Other Drug Control Policy (ATOD) and was assigned to the Committee by the Legislative Council.

The Committee adopted the proposed study plan at its August 22, 2003, meeting and received informational reports from the Prevention Resource Center, the Interagency Coordinating Council, and the DPHHS Addictive and Mental Disorders Division on the current programs in the state for prevention and treatment.

In October of 2003, the Committee dedicated a full-day meeting to this study. Information was presented by representatives from various programs and individuals with unique perspectives on prevention, treatment, the courts, law enforcement, and corrections. The Committee learned about the brain and how it reacts to addictive drugs and heard testimony from two recovering addicts. The Committee learned about the co-occurring disorders of mental illness and addiction and that the DPHHS had formed a Co-occurring Disorders Task Force and applied for a grant for a pilot program on co-occurring disorders. The Committee considered seven policy areas

that had been recommended by the former ATOD Task Force:⁵ youth access and consumption, prevention leadership and investment, a responsible treatment system, combating DUI, targeting meth, coordinated statewide leadership, and building prevention, treatment, and justice.

The Committee selected "**Coordinated Statewide Leadership**" as its first priority to tackle in the area of alcohol, tobacco, and other drug use. The members saw this issue as foundational and one that would positively affect all other areas. The Committee identified numerous issues related to establishing coordinated statewide leadership, including:

- understanding the Interagency Coordinating Council on Prevention (ICC);
- the lack of funding for infrastructure and coordination requiring funding authority;
- the ineffective unified budget;
- the need for definition in scope of responsibility;
- the need for commitment from state agencies;
- a desire to avoid duplication and the need to coordinate functions;
- a requirement to use evidence-based approaches; and
- a requirement that infrastructure include data gathering and establishing and maintaining a database.

The Committee then identified the need for a "body" to accomplish budgeting and integration of programs towards the ultimate goal of helping children become healthy adults. The Committee decided that a "body" would need a designated leader.

For the January 2004 meeting, the Committee received information on a range of prevention programs in the DPHHS, including public health **prevention programs** in

⁵Ibid, footnote #2.



the Public Health and Safety Division, such as the Tobacco Use Prevention Program, and a tobacco prevention program in the Addictive and Mental Disorders Division. If compliance rates in sales of tobacco to underage youth are not sufficient, Montana's federal Substance Abuse Prevention and Treatment Block Grant could be compromised. There was concern that the two tobacco prevention programs were not communicating or coordinating closely.

The Committee received public comment from substance abuse treatment providers on the Committee's coordinated statewide leadership efforts. There was concern about splitting current funding and placing a position in the Governor's Office that is subject to frequent change.

The Committee received information about the Yellowstone County Family Treatment Drug Court and its success at attaining permanency for children, including treating addicted parents and reuniting families when possible. The effectiveness of the treatment drug court is proven to be better than regular courts, and although some costs may be higher in the case management and operational elements initially, they save far more money in other systems, such as the child abuse and neglect system and foster care, and in prison and other incarceration costs.

For the January 2004 meeting, staff prepared "**Preliminary Proposals to Address Coordinated Statewide Leadership** in Alcohol, Tobacco, and Other Drug Prevention, Treatment, and Control". The proposals were preliminary in nature as all parties had not been consulted. These proposals were reviewed by the Committee and found to be more ambitious than the Committee desired. The Committee's comments for additional or refined proposals included:

- keeping any proposal small;

- looking at existing funding sources such as tobacco money or existing federal grants;
- keeping a proposal concentrated on prevention and treatment;
- creating a chief prevention officer, but using existing programs, individuals, or committees;
- requiring appointment of the prevention officer by the Governor; and
- using data systems between agencies in a compatible way to explore low-cost solutions.

The Committee had received information on a draft proposal to use the Montana Board of Crime Control (MBCC) as an existing board that could be used for Coordinated Drug Policy Leadership. The proposal included adding members to the Board of Crime Control, repealing the ICC, and transferring the Prevention Resource Center to a Drug Policy Resource Center. The Committee also received encouragement to direct staff to work with DPHHS division administrators on a proposal to coordinate prevention programs.

At the April 29, 2004, meeting, the Committee received **technical assistance from the National Conference of State Legislatures** funded by the federal Center for Substance Abuse Treatment on issues related to drug courts, co-occurring disorders, and funding for drug treatment.⁶

Dr. A.J. Ernst, Co-Occurring Disorders Program Manager, State of Texas, oversees both the Texas Department of Mental Health and Mental Retardation (TDMHMR) and the Texas Commission on Alcohol and Drug Abuse (TCADA). He reviewed the history, evolution, and components of the Texas model including information on:

- co-occurring service delivery history and significant factors;

⁶Copies of all of the PowerPoint presentations are available and in the Committee Minutes.



- 1996 TDMHMR and TCADA Dual Disorders Initiative Funding and Outcomes;
- System Changes - "No Wrong Door" Mainstream Integrated Services features;
- performance partnerships and integrated initiatives; and
- Texas Administrative Code: Standards for Services to Persons With Co-Occurring Disorders, Chapter 411, Subchapter N.

Bridget Kelly, B.A., CADC, CCJAP, from Treatment Alternatives for Safe Communities, presented information on drug courts: "What Works: Creating a Statewide and Collaborative Drug Court Model". She provided information on:

- an overview of drug courts;
- the drug court team and the role of the defense counsel;
- the challenges of drug-involved offenders;
- the benefits of a statewide drug court system;
- the necessary steps to accomplish a statewide drug court system;
- the role and goals of a statewide drug court system;
- case supervision versus clinical case management;
- foundations for effective systems;
- critical justice and treatment principles;
- the value of independent case management; and
- funding resource opportunities: existing state, county, city, and federal sources.

Doug Allen, Interim Director, Washington State Division of Alcohol and Substance Abuse, provided information on how Washington State funds drug courts and the Division of Alcohol and Substance Abuse.

- Washington utilizes both federal and state funds to support the drug courts. The funds are designated for treatment only. The only exceptions made are for transportation and child care costs.
- There are 14 drug courts in the state, and the annual average cost per client is approximately \$3,500.

- Washington funds treatment only for those individuals who are at 200% or less of the poverty level. Approximately one of every four persons-in-need is served.

Suzanne Gelber, SGR Health Ltd. and The Avisia Group, explained that treatment for substance abuse is largely funded by public money and is an unusual component of health care for that fact. Ms. Gelber provided information on various funding streams and other revenue sources, the importance of diversification of funds, nonrevenue strategies, and infrastructure improvements that are needed to pursue diversified funding. She informed the Committee of the methamphetamine resources and research available at the National Institute on Drug Abuse and the National Institutes for Health.

The Committee also received an overview of Montana's Chemical Dependency Bureau of DPHHS from the newly appointed bureau chief, Joan Cassidy. Presentations were also provided on the Recovery Houses in Bozeman from Shelley Johnson and in Livingston from Joan McCullough. Presentations on prevention issues were received from Boni Braunbeck of the Montana Alliance of Boys and Girls Clubs, from John Oliphant, Government Affairs Director of the Boys and Girls Clubs of America, and from Gary Pfister on the 21st Century Learning (afterschool) Program administered by the Montana Office of Public Instruction.

The Committee continued their work on the **Coordinated Statewide Leadership** issue. Committee staff had consulted with the MBCC, the ICC, and the DPHHS division administrators on both the preliminary proposals and the MBCC proposal. The results from these meetings were as follows:

- There was interest, but no commitment either way, from the MBCC.
- The ICC members expressed resistance to the repeal of the ICC and to moving of the functions of the ICC to the MBCC as it may not allow or



may discourage participation from some prevention groups because the law enforcement perspective of the MBCC would not encompass all types of prevention efforts in the state because of the law enforcement perspective.

- The DPHHS division administrators received the preliminary and MBCC proposals, but had not responded. There had been discussion that the public health system sees prevention as one of its major areas and was worried about duplication of efforts.
- There were concerns that by moving the ICC and the Prevention Resource Center to the MBCC, the MBCC would focus mainly on substance use and abuse and other aspects of prevention, such as public health would not be integrated any longer.

In addition, the DPHHS was informed that the VISTA program could no longer subsidize the efforts of the ICC or the Prevention Resource Center.

The Committee provided direction to its staff to explore a holistic prevention approach in drafting two bills for discussion purposes. One proposal would use the MBCC as the appropriate vehicle and the other proposal would use the existing structure of the ICC to provide greater statewide coordination and leadership in prevention and treatment. As the proposals became formalized in draft legislation, the Committee anticipated additional comments to assist in the development of final recommendations.

At the June 2004 meeting, the Committee received information from the Environmental Quality Council (EQC) staff on the EQC effort regarding the issue of **Methamphetamine Cleanup Standards** and a bill draft that the EQC was considering. The draft applied to meth cleanup of indoor property only (Department of Environmental Quality is responsible for outdoor and other indoor cleanup regulation) and adopted the Washington State standard of 1 microgram of meth residue per 100 square centimeters of surface. The draft authorizes the DPHHS to

establish training and certification programs for cleanup companies, which would include interstate reciprocity, and provides that certified cleanup is voluntary, that the property owner must notify future occupants if property was not cleaned by an approved process, which should involve local health departments if possible, and that the certification and training was proposed to be at no or minimal cost to the state.⁷

The Committee also received an update from Bill Slaughter, Director of the Department of Corrections, on **correctional substance abuse treatment programs**. He provided information on the institutional populations and provided a status report on the former Eastern Montana Human Services Center (also known as Eastmont) facility in Glendive. The Department of Corrections assumed ownership of the building after DPHHS closed the facility. Approximately 40 DUI offenders would be treated at Eastmont in a therapeutic community model. Many of the offenders sent to the facility will be women or will be from eastern Montana. Mr. Slaughter is also working with DPHHS on "building bridges" for felony offenders once they are released from prison. The Department of Corrections will be proposing a 40-bed methamphetamine treatment center modeled after the Warm Springs Addiction Treatment and Change, or WATCH, program and the efforts are estimated to be cost-neutral as a result of shifting the various populations.

At the June 2004 meeting, Committee staff reported on the **Coordinated Statewide Leadership** proposals that staff had worked with the ICC and reported that there was no support for the proposed legislation from ICC members. The proposal was criticized for being too broad in its attempts to be "holistic". However, the ICC came up with five suggestions:

⁷In September 2004, the EQC declined to adopt the draft bill as a committee bill on a 7-7 vote.



- the elimination of the ICC by the 2005 Legislature or the elimination of the unified budget requirement;
- looking at public and private entities currently involved in the ICC to write a report on existing prevention activities and annually commit to specific steps to improve prevention activities;
- participation by statewide elected officials from the Executive Branch and representatives from the Montana Supreme Court in an annual event to listen to and comment on the existing prevention activities reports;
- that DPHHS commits to the ongoing support of the Prevention Resource Center; and
- for the continuation of the work group that supports the ICC.

Bill Mercer, Chairman of the Montana Board of Crime Control (MBCC) and U.S. Attorney for the District of Montana, spoke to the Committee about the coordinated statewide leadership proposal. Although the MBCC did not make any formal comments on the proposal, Mr. Mercer shared his belief that the proposal had the potential to fulfill a need that has growing support for aggressive, coordinated efforts in all areas of enforcement, treatment, and education. He provided the Committee with language from the creation of the federal Office of National Drug Control Policy. He believed that the position of a drug policy coordinator needed to be a cabinet-level position to support the multiple agencies involved in combating the drug problem and to have the "bully pulpit" that the Governor's Office provides. He believed that it is important to limit the issues of coordination to prevention and treatment of substance abuse, supporting the previous decision that the Committee had made.

Based on the ICC reluctance, the ICC bill draft was not prepared. The MBCC proposal was drafted and presented to the Committee. The Committee adopted a motion to amend the proposed draft to include a chief prevention officer as a

cabinet-level officer (not attached to the MBCC) who is limited to coordination of substance abuse prevention and treatment. The Committee also directed staff to draft a resolution communicating to the next Governor that the Committee and Legislature believe that drug prevention and treatment are priorities and that existing efforts at prevention, treatment, and coordination should be continued.

Methamphetamine Summit. The Governor held a "Cracking Down on Meth" Summit June 1 through 3, 2004, in Billings. Senator John Esp, Representative Edith Clark, Representative Carol Gibson, and Committee staff participated. The National Crime Prevention Council provided technical assistance and used the "Social Reconnaissance Model" of strategic planning. Breakout groups in the topical areas of child protective services, community treatment/environmental cleanup, judicial/law enforcement, media/business, prevention, and youth/courts/education met and identified problems, barriers, and solutions. The Alcohol, Tobacco, and Other Drug Control Policy Task Force was reconstituted and assisted in identifying the next steps. Results from the breakout groups were compiled into a survey that was sent to all participants (40% return rate). Representatives from the National Crime Prevention Council reported the results on August 25, 2004, with Representative Edith Clark and staff present, just prior to the Committee's final meeting. Jean Branscum, Policy Advisor to the Governor, reported the results to the Committee at the August 27, 2004, meeting. The cross-cutting priorities identified from all of the topical areas were to:

- establish statewide coordination mechanisms for all affected agencies and organizations;
- develop interagency training and protocols;
- launch a statewide public awareness campaign;
- survey other states for best practices;
- develop a Drug-Endangered Children (D.E.C.) Model;
- regulate the sale of precursor chemicals; and



- develop and expand the methamphetamine treatment model;

Regional breakout sessions were held at the Summit and have since resulted in regional meetings. Cascade County has held a county meth summit, and regional summits are planned for Butte in September of 2004 and Miles City in January of 2005. The establishment of local D.E.C. teams and protocols was one of the recommendations that ranked near the top at the Governor's Methamphetamine Summit, and D.E.C. training will be held in Helena in November 2004, hosted by the Montana Narcotics Officers Association and the Montana Division of Criminal Investigation. The training will be sponsored by the National Drug Endangered Children Alliance. The Governor's Office has been working toward the implementation of a Montana Meth Watch program to establish public/private partnerships to assist communities in their fight to combat methamphetamine production. Meth Watch works to curtail suspicious sales and theft of pseudoephedrine and other precursor products used in the manufacturing of methamphetamine, to increase awareness about methamphetamine, and to give local communities an effective tool in addressing the meth problem locally. Both the Committee members and the Governor's staff agreed that protecting children is the most important thing that needs to be done.

The Governor's Office has been working toward the implementation of a Montana Meth Watch program to establish public/private partnerships to assist communities in their fight to combat methamphetamine production.

The information reported on August 25, 2004, was discussed at the Committee's final meeting on August 27, 2004. The Committee incorporated some of the information about statewide drug prevention and treatment coordination into their discussion and into their subsequently adopted bill drafts.

The Committee completed its work on SJR 11 and **coordinated statewide leadership** by finalizing the two committee bill drafts. The major recommendation was the creation of an Office of Substance Use Prevention and Treatment headed by a cabinet-level Commissioner who would be appointed by the Governor (LC0294). The second bill draft was a resolution recognizing the Executive Branch efforts at interagency cooperation and encouraging the subsequent administration with a newly elected Governor and newly appointed department directors to continue the efforts (LC0295). The Committee also directed that a letter be sent to the Governor's Office of Budget and Program Planning requesting a review of the existing multiple advisory councils in areas related to substance abuse prevention or treatment. The Committee believed that there was a possibility of downsizing or consolidating existing advisory councils to provide resources to support a Commissioner and an Office of Substance Abuse Prevention and Treatment.

The resolution (LC0295) was adopted as this is an election year and in the transition to a new Executive Branch administration and department directors, the Committee was concerned that progress made over the interim may be lost in the transition. In the resolution, the Committee stated its desires:

- (1) That all agencies in the Executive Branch, including those under the Governor, the Attorney General, and the Superintendent of Public Instruction work together to coordinate education, prevention, and drug control efforts to enable and provide resources to local communities to combat the ill effects of abuse of legal and illegal substances and their concomitant effects on the public health and criminal justice systems.
- (2) That the new Governor support efforts to coordinate substance abuse prevention and treatment activities within and across Executive Branch agencies.
- (3) That the Director of the Department of Public Health and Human Services support the efforts of the VISTA program and the Prevention



Resource Center, maintain the Prevention Connection newsletter within the department, and disseminate information directly to communities.

- (4) That the Director of the Department of Public Health and Human Services support a position to perform intra-agency cross-division planning and coordination for prevention activities, including the prevention of alcohol, tobacco, and other drug use and abuse, and with other public health prevention efforts, including but not limited to the prevention of child abuse, teen pregnancy, HIV/AIDS, suicide, and the retail sale of alcohol and tobacco to minors.
- (5) That the Board of Crime Control grow in its efforts to coordinate its substance abuse prevention, delinquency and crime prevention, and public safety programs with those at the Department of Public Health and Human Services.

Although there is a Chemical Dependency Bureau in the Addictive and Mental Disorders Division (AMDD) of the DPHHS that concentrates on substance abuse treatment and prevention, there are numerous other prevention and treatment programs in the state related to substance abuse. AMDD administers the Community Incentive Program and the Substance Abuse and Prevention and Treatment block grant. The vast majority of the money in prevention is federal funds, and the DPHHS treatment funds are also predominantly federal.

A significant number of substance abuse and mental health treatment dollars, predominantly from the state general fund, are spent in the correctional and juvenile justice systems outside of the treatment dollars at the DPHHS. There are treatment programs at the state prisons, including the regional correctional and private prison facilities. Prerelease and other community programs provide additional treatment programs or may require access to community treatment programs. There are no standards or shared treatment protocols to ensure a transition to community services. There is not sufficient capacity in the treatment system, and there are not

sufficient transition programs between the correctional and traditional treatment systems.

The intent of the Committee proposals is to coordinate programs at the highest administrative level in a single office charged with the responsibility and authority to concentrate on the "big picture". The goal is to provide a bridge between prevention and treatment programs. There is no intent to take over or to supplant existing programs, but the intent is to coordinate and maximize existing efforts and to provide a repository of information for communities to access.

The ICC's Unified Prevention Budget shows that the substance abuse prevention budget was approximately \$4.75 million in FY04, yet only \$2 million of that rested with the DPHHS Addictive and Mental Disorders Division. For example in the Public Health and Safety Division, there is tobacco use prevention program and a Fetal Alcohol Syndrome program; the MBCC funds enforcing underage drinking laws, Safe and Drug Free Schools, and Title V Juvenile Delinquency Prevention funds; and the Office of the Superintendent of Public Instruction also receives Safe and Drug Free Schools funds.⁸ There are also programs in other state departments that relate to prevention and treatment of substance abuse, including Agriculture, Transportation, Military Affairs, and Environmental Quality.

In addition, at the meeting announcing the results of the Governor's Methamphetamine Summit, many other state agency representatives talked about their programs relating to methamphetamine specifically. The Montana Department of Agriculture is working with agricultural groups to develop neighborhood watch programs and is training suppliers about the precursors for methamphetamine

⁸See the "Unified Prevention Budget of the Interagency Coordinating Council for State Prevention Programs" in the April 29, 2004, Minutes.



production, including an Anhydrous Safety Program. The Department of Corrections is looking at a standard treatment model for methamphetamine treatment and working with the DPHHS on transitioning offenders back into the community more successfully. The DPHHS reiterated its intent to formalize communications between its divisions as methamphetamine abuse affects programs in multiple divisions. The Department of Environmental Quality is a signatory of the Clandestine Meth Lab Mitigation Plan with the MBCC for the environment that is exterior to physical structures. The Department of Labor and Industry must deal with the increasing frustration with drug abuse as a work force issue. Drug testing exacerbates worker shortages. The Department of Labor and Industry plans to use job training to increase awareness of the issue and the Jobs for Montana Graduates program to help with at-risk kids. The licensing boards for medical professions at the Department of Labor and Industry were identified as needing to be involved in leadership on training and identifying drug abuse and its effects on individuals, especially children. Housing is affected in many facets and a session at the statewide Housing Conference addressed drug labs and meth. An educational effort is needed for bankers, real estate agents, and other housing providers that are present in homes to recognize dangers of meth use and labs and to know about the resources available to them. Homeland Security issues in multiple departments can be used to combat drug labs and the impact of drugs in the communities. There was no single source or repository of this information—it was only shared as a result of the Meth Summit. The proposed Office of Substance Abuse Prevention and Treatment could be a central repository and point of contact for referral to the individual programs.

All of these examples point to the vast efforts that in the big picture relate to prevention and treatment of substance abuse and how it affects all aspects of society. The Committee believes that the Commissioner would have many opportunities to take the position and develop it into a tool for the Governor and the

Legislature to assist communities in dealing with the problems that substance use and abuse, especially illegal drug use, cause in a community.

The Committee purposely chose the front end of the continuum—prevention and treatment—and left the drug control and enforcement to the Attorney General, the Department of Justice, and existing law enforcement efforts. The Committee did, however, chose to provide a link between prevention, treatment, and enforcement through the MBCC, which administers a number of prevention funds. The Commissioner would be a statutory member of the MBCC and would be able to communicate with the Attorney General and representatives from law enforcement, juvenile justice, and corrections and to be aware of and to coordinate programs.

For the Committee's proposals to succeed, it will require political will, agency cooperation, leadership, and public support. These cannot be legislated. The public spoke to the Committee and its staff throughout the interim on the need and desire for leadership and coordination, stating that people at the local level need information and support. While there is limited agency coordination and cooperation, without this proposal it does not exist at a systematic, integrated, or statewide level. This proposal would have one person focusing on the "big picture" in the area of substance abuse prevention and treatment to develop a strategic plan to assist communities in preventing and treating substance abuse and saving the human and societal costs of failure to do so.



Chapter 4

Areas for Future Study

- ★ Follow new Office and Commissioner of Substance Abuse Prevention and Treatment, if LC0294 is successful in the 2005 Legislature.
- ★ Follow the DPHHS proposal for intra-agency prevention coordination and support of the Prevention Resource Center.
- ★ Review what happened with the Child Substantiation Rules of concern at the August 27, 2004, meeting.
- ★ Follow the progress of Treatment Courts regarding statewide coordination and funding issues.
- ★ Inquire and monitor the development of strategic planning and performance measures for DPHHS (SB 160, Ch. 185, L. 2003).
- ★ Review CHIP contract provisions: reserve, administrative costs, Caring for Children Program.
- ★ Follow DPHHS progress on unregulated youth behavioral programs regarding registration and mandatory licensing.
- ★ Monitor the DPHHS-proposed study of Addictive and Mental Disorders Division mental health and chemical dependency facilities and any coordination with the developmental disabilities facilities.
- ★ Receive information on 2-1-1 in Montana, an FCC-approved telephone number for human services.



Legislative Staff Reports and Available Materials

Legislative Services Division

Fox, Susan Byorth. "2003-2004 Interim, Children, Families, Health, and Human Services Interim Committee". May 2003.

Fox, Susan Byorth. "Senate Joint Resolution No. 11: Study Plan, Study Issues and Options on Remaining Alcohol, Tobacco, and Other Drug Control Policy Task Force Recommendations" August 11, 2003.

Petes, Greg. Information Request #1668 Response to Representative Edith Clark on an analysis of the use and allocation of certain alcoholism treatment funds. October 8, 2003

Fox, Susan Byorth. "House Joint Resolution No. 3: Study Plan." (Includes history and background, child abuse and neglect process, legal requirements, services and representation for children, resources, alternatives, related efforts, and study issues.) October 2003.

Owa, Miko. "Summary of State Spending on Substance Abuse." (Chart). October 30, 2003.

Petes, Greg. "Child Abuse and Neglect Legal Representation of Indigent Parents." January 23, 2004.



National Conference of State Legislatures. "Information on State Requirements or Guidelines for Court-Appointed Counsel for Indigent Parents in Dependency Cases." November 2003.

Fox, Susan Byorth. "Preliminary Proposals to Address Coordinated Statewide Leadership in Alcohol, Tobacco, and Other Drug Prevention, Treatment, and Control." January 2004.

Fox, Susan Byorth. "Additional Background Information for SJR 11 Study" (includes prevention programs identified in the State Prevention Resource Directory, department programs, and other state models.) January 2004.

Fox, Susan Byorth. "Public Assistance Benefits and Convicted Felony Drug Offenders." March 2004.

Fox, Susan Byorth. "House Joint Resolution No. 3 Representation for Parents and Children in Child Abuse and Neglect Cases: Issues and Options." March 2004.

Petes, Greg. Information Request #1809 Response to Representative Edith Clark on questions relating to the Travis D. litigation class action settlement agreement. April 19, 2004.

Fox, Susan Byorth. "Tobacco, Alcohol, and Gambling Taxes." April, 2004.

Fox, Susan Byorth. "House Joint Resolution No. 3: Representation for Parents and Children in Child Abuse and Neglect Cases. Recommendations to the Law and Justice Interim Committee Study of a Statewide Public Defender System." May 2004.



Legislative Fiscal Division

Purdy, Taryn and Lois Steinbeck. "State Fiscal Relief from The Federal Jobs and Growth Relief Reconciliation Act." June 12, 2003.

Lloyd, Roger. "Tobacco Settlement Funds." August 2003.

Gervais, Pat. "TANF Update." October 2, 2003.

Steinbeck, Lois. "Update on Medicaid and Medicaid Redesign." February 18, 2004.

Gervais, Pat. "Developmental Disabilities Program: Emerging Issues and Eastmont Status." March 10, 2004.

Steinbeck, Lois. "Selected Medicaid and MHSP Issues." May 26, 2004.

Gervais, Pat. "Developmental Disabilities Program: Update on Emerging Issues." June 4, 2004.

Steinbeck, Lois and Pat Gervais. "Travis D. Settlement Agreement: Potential Cross System Impacts and Implications." June 10, 2004.

Legislative Audit Division

DPHHS Financial Compliance Audit for the Two Fiscal Years ending June 30, 2003. (03-14). November 2003.



Hunthausen, Tori. IS Support Work on Systems Administered by the DPHHS (03-DP-05). May 28, 2003.

Department of Public Health and Human Services

- ▶ Chemical Dependency Bureau, 2002 Annual Report (Attachments).
- ▶ Seninger, Steve, Ph.D. "Montana's Uninsured: Report on State Planning Grant." (PowerPoint Presentation). University of Montana-Missoula, Business and Economic Research. June 25, 2003.
- ▶ "What Happens Next? A Guide to the Child and Family Services Division (CFSD)." July 2003.
- ▶ Montana Continuum of Care Coalition. 2003 Montana Homeless Survey, Preliminary Summary Results. August 22, 2003.
- ▶ Service Area Authorities Implementation Plan. January 22, 2004.
- ▶ Brown, Shirley K. "House Joint Resolution 3: Public Defense for Indigent Parents in Child Abuse and Neglect Proceedings." January 23, 2004.
- ▶ Brown, Shirley K. "Breakdown of Judicial Districts and Stage at which Counsel is Appointed for Indigent Parents (as of January, 2003)." April 30, 2004.
- ▶ Floyd, Joe W., Ph.D. Effects of the TANF Benefit Reduction on Current and Past TANF Recipients: The Results of Two Telephone Surveys. Montana State University-Billings. March 2004.
- ▶ Unregulated Youth Residential Care Programs In Montana. November 2003.
- ▶ Nth-Degree Analytics, LLC. 2004 Montana CHIP Provider Survey. Montana Department of Public Health and Human Services. July 2004.
- ▶ Gostin, Lawrence, J.D., LL.M. and James G. Hodge, Jr. J.D., LL.M. "The Turning Point Model State Public Health Act: Montana Code and Administrative Rules Analysis." The Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities. January 23, 2004.



- ▶ Draft comments from information meetings regarding unlicensed youth residential care facilities in Great Falls and Kalispell on July 27 and 28, 2004. August, 2004.

Office of Public Instruction

- ▶ *Montana Youth Risk Behavior Survey* (summary report and six volumes). Montana Office of Public Instruction, February 2003 (catalogued in the Legislative Library).

Governor's Office

- ▶ Unified Prevention Budget. ICC Report pursuant to 2-15-225, MCA. The Interagency Coordinating Council for State Prevention Programs, October 30, 2003.
- ▶ Adee, Bonnie. Montana Mental Health Ombudsman's Report, 2003. Mental Health Ombudsman Office.
- ▶ Adee, Bonnie. Montana Mental Health Ombudsman's Report for Fiscal Year 2004 - Year-To-Date. January 23, 2004. Mental Health Ombudsman Office.
- ▶ Model Law from the Bazelon Center for Mental Health Law: "Building Bridges". Provided by Bonnie Adee, July 1, 2004.
- ▶ National Crime Prevention Council. "Montana: Priority Policy and Program Recommendations from the Governor's Summit on Methamphetamine." August 25, 2004.

Public Reports

- ▶ Regular information from Dennis Brezina, Director of Aluminum Anonymous, Inc., regarding House Joint Resolution No. 31.



- ▶ Montana Children's Initiative, Inc. A Sampling of High-Cost Children's Mental Health in Montana. (PowerPoint Presentation). January 22, 2004.
- ▶ Montana Children's Initiative. Executive Summary of High-Cost Children's Mental Health Cases in Montana. January 22, 2004.
- ▶ Roche, Brenda K. and Connie Camino. Treatment/Drug/Wellness Courts in Montana, Update January 2004.
- ▶ Kinsvatter, Jason. Cascade County Law Clinic Program Data and Presentation. January 23, 2004.
- ▶ Montana Childcare Resource Center and Referral Network, Janet Bush provided information on percentage of Montana school-aged children being served by licensed or unlicensed programs and on the Montana Afterschool Network providers. April 30, 2004.
- ▶ Bush, Ellen. "Montana CASA/GAL Program Models At a Glance." October 31, 2003.
- ▶ National Association of Therapeutic Schools and Programs (NATSAP). "Behavior Support Management in Therapeutic Schools, Therapeutic Programs and Outdoor Behavioral Health Programs." January 23, 2004.
- ▶ "Children, Families, Health, and Human Services Interim Committee: Unregulated Youth Residence Care Programs in Montana: Spring Creek Lodge Academy Information, Response, and Comments." Revised August 2, 2004.



HOUSE BILL NO. 31

INTRODUCED BY D. ROBERTS

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES

INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR AN OFFICE OF SUBSTANCE ABUSE PREVENTION AND TREATMENT AND A COMMISSIONER; ATTACHING THE OFFICE OF SUBSTANCE ABUSE PREVENTION AND TREATMENT TO THE GOVERNOR'S OFFICE; REPLACING THE INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS WITH THE OFFICE OF SUBSTANCE ABUSE PREVENTION AND TREATMENT; PROVIDING THAT THE COMMISSIONER IS A MEMBER OF THE BOARD OF CRIME CONTROL; AMENDING SECTION 2-15-2006, MCA; REPEALING SECTION 2-15-225, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the Alcohol, Tobacco, and Other Drug Control Policy Task Force had as its most important recommendation the establishment of a "drug czar" position to provide leadership for state prevention, treatment, and correctional programs; and

WHEREAS, the Legislative Children, Families, Health, and Human Services Interim Committee continued the efforts prescribed in the Senate Joint Resolution No. 11 study and recommends the creation of an Office of Substance Abuse Prevention and Treatment with a cabinet-level Commissioner to lead prevention efforts in the state and to coordinate prevention and treatment programs between state agencies in order to assist local communities in battling the devastating effects of substance abuse, especially illegal drug use; and

WHEREAS, the state has many separate efforts that the Commissioner can build on and use as resources, including the Prevention Resource Center, the Addictive and Mental Disorders Division, and Tobacco Use Prevention Program in the Department of Public Health and Human Services, prevention efforts of the Montana Board of Crime Control and Office of Public Instruction, and ongoing data-gathering processes, such as the Prevention Needs Assessment, the Behavior Risk Factor Survey System, and the Youth Risk Behavior Survey; and

WHEREAS, the Office and the Commissioner will act as a liaison for all Executive and Judicial Branch agencies that have programs related to substance abuse prevention, treatment, and control or mitigation of the ramifications of substance abuse, such as the Departments of Agriculture, Commerce, Corrections, Environmental Quality, Justice, Labor, Military Affairs, Public Health and Human Services, Revenue, and Transportation, the various treatment and problem-solving courts, and the Offices of the Attorney General and the Superintendent of Public Instruction; and

WHEREAS, it is the intent of the Legislature to allow the Office and Commissioner of Substance Abuse Prevention and Treatment to evolve as an understanding is developed of the state programs and the needs of the people of Montana.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Office of substance abuse prevention and treatment. (1)

There is an office of substance abuse prevention and treatment. The head of the office is a commissioner appointed by the governor. The office and commissioner of substance abuse prevention and treatment are attached to the office of the governor for administrative purposes only as prescribed in 2-15-121.

(2) The commissioner shall coordinate efforts for statewide programs involved in prevention and treatment of substance abuse, including abuse of alcohol, tobacco, and other drugs.

(3) Upon request, state agencies shall cooperate with the office of substance abuse prevention and treatment and shall provide budgetary, program, and grant information on a regular basis. The commissioner shall work with the office of budget and program planning to prepare a directory of all prevention and treatment programs, funds, and grants in the state. The commissioner and the budget director shall prepare a budget proposal for the statewide coordination of substance abuse prevention and treatment in order to decrease duplication and provide the necessary technical assistance, evaluation, public relations, or other services necessary to administer programs appropriately and efficiently.

NEW SECTION. Section 2. Duties of office of substance abuse prevention and treatment. (1) The duties of the office of substance abuse prevention and treatment are to:

(a) develop and coordinate a unified statewide strategic plan to assess whether agency prevention and treatment programs and budgets are efficiently addressing and coordinating the continuum of substance abuse education, prevention, intervention, and treatment programs for alcohol, tobacco, and other drugs in a manner that improves the life and health outcomes for youth and adults in Montana and to integrate the strategic plan into the executive budget and planning processes;

(b) coordinate and provide advice to agencies regarding ways to achieve efficiencies in spending and to improve interagency cooperation to enhance state and local substance abuse education, prevention, intervention, and treatment programs across the state;

(c) identify the appropriate state agency or agencies to provide research and analysis regarding successful programs, evidence-based best practices, standards, procedures, and protocols in order to develop interagency programs to coordinate prevention programs and to coordinate treatment efforts, especially between the department of public health and human services and the department of corrections;

(d) advise the governor and the legislature regarding proposals for statewide collaborative efforts, including partnerships and elimination of duplication of efforts, and to hold programs accountable by measuring impact and success;

(e) provide state and local agencies and community programs with a central repository for resource and referral information, grant opportunities, data on substance use and abuse, prevention and treatment standards and best practices, planning tools, and training opportunities;

(f) establish resources for accountability through evaluation of performance outcomes for prevention and treatment programs;

(g) provide information regarding training and cross-training programs and opportunities statewide; and

(h) provide coordination among local, state, tribal, and federal efforts and to integrate the efforts in the statewide strategic plan.

(2) The commissioner shall attempt to bridge efforts between officials of tribal governments, local governments, and the federal government and state elected officials and

department directors, including but not limited to the attorney general, the state court administrator, the directors of the departments of public health and human services and corrections, the department of public health and human services that administers substance abuse prevention and treatment as provided for in Title 53, chapter 24, part 2, the board of crime control, the tobacco use prevention program administered by the department of public health and human services, the office of the superintendent of public instruction, and all other state agencies that have programs related to substance abuse prevention, treatment, intervention, or control.

(3) The commissioner shall assist the governor and the attorney general in developing comprehensive statewide strategic plans to address critical issues related to substance abuse. The commissioner shall create or identify existing interagency coordinating mechanisms to assist in the duties of the office and to develop memoranda of understanding when necessary.

NEW SECTION. **Section 3. Report to governor and legislature.** The office of substance abuse prevention and treatment shall prioritize the duties provided in [sections 1 and 2] and prepare an analysis, a proposed long-term work plan, and proposed methods of evaluation for the office of substance abuse prevention and treatment. The office shall report to the governor and the children, families, health, and human services interim committee, as provided in 5-11-210, regarding its analysis, plan, evaluation methods, progress, findings, and recommendations by September 1, 2006.

Section 4. Section 2-15-2006, MCA, is amended to read:

"2-15-2006. Board of crime control -- composition -- allocation. (1) There is a board of crime control.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(3) The board is composed of 18 members appointed by the governor in accordance with 2-15-124 and any special requirements of Title I of the Omnibus Crime Control and Safe Streets Act, as amended. The commissioner of substance abuse prevention and treatment, provided for in [section 2], is a member of the board. The board ~~shall~~ must be representative of:

(a) state and local law enforcement and criminal justice agencies, including agencies directly related to the prevention and control of juvenile delinquency;

(b) units of general local government; ~~and;~~

(c) public agencies maintaining programs to reduce and control crime ~~and shall include representatives of; and~~

(d) citizens and professional and community organizations, including organizations directly related to crime prevention, delinquency prevention, and public safety."

NEW SECTION. Section 5. Repealer. Section 2-15-225, MCA, is repealed.

NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [sections 1 and 2].

NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2005.

- END -

Appendix B

59th Legislature

LC0295.01

_____ JOINT RESOLUTION NO. _____

INTRODUCED BY _____
(Primary Sponsor)

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES
INTERIM COMMITTEE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE GOVERNOR, THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, AND THE DEPARTMENT OF CORRECTIONS TO CONTINUE EFFORTS TOWARD INTRAAGENCY AND INTERAGENCY PREVENTION COORDINATION AND TO SUPPORT INTERAGENCY EFFORTS TO ASSIST MONTANANS IN NEED AND TO COMBAT THE SUBSTANTIAL EFFECTS OF SUBSTANCE ABUSE, ESPECIALLY METHAMPHETAMINE USE, ON OUR SOCIETY.

WHEREAS, the Department of Public Health and Human Services has made proposals regarding intraagency prevention coordination for the myriad of prevention programs at the Department that involve public health and prevention activities, including alcohol, tobacco, and other drug use and abuse prevention; and

WHEREAS, the Department of Public Health and Human Services and the Department of Corrections have teamed together in the "Building Bridges" effort to provide transition social services to offenders who are or will be released from incarceration; and

WHEREAS, the Board of Crime Control has restructured to include subcommittees on prevention and treatment and funds many prevention programs involving youth, crime, and drug control; and

WHEREAS, the former Governor held a Methamphetamine Summit to explore the policy options and strategies to reduce the production, distribution, and use of methamphetamine in Montana and energized many regions of the state to coordinate efforts at the local level and also reconvened the Montana Alcohol, Tobacco and Other Drug Control Policy Task Force to assist in developing policy initiatives for the future; and

WHEREAS, the majority of drug control efforts lie in local, state, tribal, and federal law enforcement agencies and with the Department of Justice, and law enforcement cannot solve the problem of substance abuse, especially methamphetamine use, alone and requires coordinated education, prevention, intervention, and treatment efforts throughout society.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That all agencies in the Executive Branch, including those under the Governor, the Attorney General, and the Superintendent of Public Instruction, work together to coordinate education, prevention, and drug control efforts to enable and provide resources to local communities to combat the ill effects of abuse of legal and illegal substances and their concomitant effects on the public health and criminal justice systems.

(2) That Governor Schweitzer support efforts to coordinate substance abuse prevention and treatment activities within and between Executive Branch agencies and continue the efforts between the Departments of Public Health and Human Services and Corrections to bridge offenders back into the community.

(3) That the Director of the Department of Public Health and Human Services support the efforts of the VISTA program and the Prevention Resource Center and maintain the Prevention Connection newsletter to disseminate information directly to communities.

(4) That the Director of the Department of Public Health and Human Services support a position to perform intraagency, cross-division planning and coordination for prevention activities, including the prevention of alcohol, tobacco, and other drug use and abuse, with other public health prevention efforts, including but not limited to the prevention of child abuse, teen pregnancy, HIV/AIDS, suicide, and the retail sale of alcohol and tobacco to minors.

(5) That the Board of Crime Control grow in its efforts to coordinate its substance abuse prevention, delinquency and crime prevention, and public safety programs with those at the Department of Public Health and Human Services and other agencies.

- END -



Children, Families, Health, and Human Services Interim Committee

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

58th Montana Legislature

SENATE MEMBERS

JOHN ESP
JERRY O'NEIL
GERALD PEASE
TRUDI SCHMIDT

HOUSE MEMBERS

EVE FRANKLIN--Vice Chair
DON ROBERTS--Chair
EDITH CLARK
CAROL GIBSON

COMMITTEE STAFF

SUSAN FOX, Research Analyst
GREG PETESCH, Staff Attorney
DAWN FIELD, Secretary

September 24, 2004

Charles Swysgood, Budget Director
Office of the Governor
State Capitol
Helena MT 59620

Dear Mr. Swysgood:

The Children, Families, Health, and Human Services Interim Committee would like to request that the Office of Budget and Program Planning explore the possibility of downsizing or consolidating existing advisory councils to create efficiencies and to provide resources to support the Office of Substance Abuse Prevention and Treatment and a Commissioner proposed by the Committee in LC0295.

The intention of creating the Office and employing a Commissioner is to coordinate and strategically plan for substance abuse prevention and treatment across state agencies. The Committee made this recommendation after studying the issue over the course of the interim and in carrying forward the work of the Governor's and Attorney General's Alcohol, Tobacco and Other Drug Control Policy Task Force. The Committee concentrated on coordinated statewide leadership, and this proposed legislation is the result. It is also consistent with and supports the findings of the Governor's Methamphetamine Summit the found cross-cutting principles of the need to establish statewide coordination mechanisms for all affected agencies and organizations and to develop interagency training and protocols, among other related priorities.

It is the Committee's understanding that many agency grants require an advisory council, but perhaps multiple advisory councils exist in areas related to substance abuse prevention or treatment that could be consolidated or used in an advisory capacity to the new Office and Commissioner and to free up resources to fund the new Office and Commissioner and to accomplish the goals of the grants.

At a time when our office is reviewing budgets, the Committee requests that you direct your agencies to review administratively created advisory boards and the resources that are dedicated to them and to provide this information to the Legislature through the Children, Families, Health, and Human Services Interim Committee and the Legislative Finance Committee.

To assist you in collecting information regarding possible advisory councils for restructuring, you may wish to contact the individuals with whom the Committee worked, primarily Vicki Turner of the Prevention Resource Center and the DPHHS Addictive and Mental Disorders Division. The Committee members also consulted with Jean Branscum and Bob Anderson over the course of their study. These contacts may be of assistance to you in gathering information for restructuring. The Committee staff, Susan Byorth Fox, is also willing to meet with any of your staff or agency personnel to assist in the fulfillment of this request. Thank you for your consideration.

Sincerely,

Representative Don Roberts
Presiding Officer

Legislation Status -- By Agency

AGY	PGM	PRIORITY	SHORT_TITLE	DISPOSITION	COMBINE WITH	REVENUE CHANGE	REVENUE TYPE	FUND	AMOUNT/YR
-----	-----	----------	-------------	-------------	--------------	----------------	--------------	------	-----------

6901

6901	04	001	Tobacco Settlement Account	Approved					
6901	11	002	Hospital Tax	Approved					
6901	04	003	Medicaid redesign	Approved					
6901		004	Placeholder - withdrawn - 6-2-04	Withdrawn	by agency				
6901	22	005	Waters Edge	Disapproved					
6901	33	006	State Hospital - Forensic Unit	Approved					
6901	33	007	Pre-admission screening authority	Withdrawn	by agency				
6901	10	008	DSD Commitment	Approved					
6901	009		Placeholder - withdrawn - 6-2-04	Withdrawn	by agency				
6901	11	010	System of Care Model	Approved					
6901	011		Placeholder - withdrawn - 6-2-04	Withdrawn	by agency				
6901	08	012	Critical Access Hospitals	Approved					
6901	05	013	Interaction w/ tribal IV-D programs	Approved					
6901	03	014	Montana ICWA	Approved					
6901	02	015	Tribal Family Assistance Plan	Approved					
6901	22	016	Power of Attorney- vulnerable seniors	Approved					
6901	01	017	Electronic benefit transfer of TANF cash	Approved					
6901	07	018	PH statute modernization	Approved					
6901	22	019	Amend title 72 - Guardians	Approved					
6901	22	020	County Attorney Duties	Approved					
6901	22	021	Elder abuse penalty	Approved					
6901	05	022	CSED Omnibus	Approved					
6901	03	023	CPS Omnibus Bill	Approved					
6901	11	024	CHIP simplified application form	Approved					
6901	05	025	Review & modification of support	Approved					

Legislation Status -- By Agency

AGY	PGM	PRIORITY	SHORT_TITLE	DISPOSITION	COMBINE WITH	REVENUE CHANGE	REVENUE TYPE	FUND	AMOUNT/YR
6901	10	026	Revise & clarify provider tax on ICF/MR	Approved					
6901	04	027	Medicaid reserve account	Disapproved					
6901	04	028	Administrative hearings representation	Approved	tentative				
6901	09	029	Vital statistics law changes	Approved					
6901	33	030	Interim study of AMDD facilities	More Info					
6901	07	031	License tattoo & body piercers	Approved					
6901	04	032	Interagency Coord Council-ICC for state pre	Approved					
6901	08	033	Unregulated youth residential care program	Approved					
6901	02	034	Begin penalty period on application date	Approved					
6901	02	035	Extend medicaid asset transfer look-back	Approved					
6901		036	No paperwork - missed number						
6901	02	037	Delegate eligibility determinations to tribes	Disapproved					
6901	22	038	Waiver of deeming proposal	Approved					
6901	11	039	Medicaid waive authority	Approved					
6901	11	040	SED waiver proposal	Approved					



Children, Families, Health, and Human Services Interim Committee

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

58th Montana Legislature

SENATE MEMBERS
JOHN ESP
JERRY O'NEIL
GERALD PEASE
TRUDI SCHMIDT

HOUSE MEMBERS
EVE FRANKLIN-Vice Chair
DON ROBERTS-Chair
EDITH CLARK
CAROL GIBSON

COMMITTEE STAFF
SUSAN FOX, Research Analyst
GREG PETESCH, Staff Attorney
DAWN FIELD, Secretary

May 4, 2004

To: Members of the Law and Justice Interim Committee

From: Susan Byorth Fox, Research Analyst

Re: Recommendations regarding House Joint Resolution No. 3 in regards to the development of a Statewide Public Defender System

House Joint Resolution No. 3 directed the Children, Families, Health, and Human Services Interim Committee (Committee) to "examine child abuse and neglect proceedings in order to determine how to best provide representation to families at an appropriate time in the child protective services proceedings to further the goals of balancing the best interests of the child, the rights of parents, and the possibility of reunification of the family and to provide prevention and early intervention strategies as early in the process as possible".

The Committee has concentrated its study on legal counsel for indigent parents, but has also reviewed the use of guardians ad litem and court-appointed special advocates for children. The Committee adopted the following recommendations on April 30, 2004, and refers them to the Law and Justice Interim Committee for consideration as an integral part in the development of a statewide public defender system.

As a part of this document, I have included the issues that the Committee addressed and their recommendations. I have also included as attachments the recommendations with the full background provided to the Children and Families Interim Committee as a part of an Issues and Options Paper, and the House Joint Resolution No. 3 Study Plan that includes additional background information. Thank you for allowing me to present a summary of these recommendations on April 30 at the Subcommittee meeting. If you have any questions, I am available to assist the Law and Justice Interim Committee members and staff in any way possible.

Summary of Issues and Recommendations

I. Representation for Parents

Issue A: Should all parents receive legal counsel in child abuse and neglect cases that reach the court? At what point should legal representation be appointed for indigent parents in child abuse and neglect cases: removal, placement, termination of parental rights?

Recommendation: Recommend to the Law and Justice Interim Committee to consider statutory changes to require appointment of legal counsel for all parents, guardians, or those with legal custody who are involved in child abuse and neglect proceedings that may result in removal or placement of a child or termination of parental rights as a part of that Committee's consideration in the development of a public defender system in the state.

The Committee also asks the Law and Justice Interim Committee to consider a family law specialist in the public defender system to assist public defenders in difficult cases^{*****} and recommends the wisdom of a background or expertise in family law for those who are assigned these cases in a public defender system.

Additional Data Necessary

Issue B: At this point, specific data is not available on how many parents are already receiving legal counsel for removal, placement, and termination proceedings and how many additional parents would need services. Additional analysis would be necessary in order to determine how many children are actually served in 1 year in any capacity that brings the case in front of a court and to determine the number of parents that would need to have counsel provided. The addition of an unknown burden on the various public defender programs that exist separately in each county may not be reasonable, and to fully implement a proposal, additional information is necessary.

Recommendation: The Law and Justice Committee may want to consider requesting that the State Court Administrator or the DPHHS Child and Family Services Division, in cooperation with the other, determine the numbers of parents, guardians, or those with legal custody of children who would require legal counsel in removal, placement, and termination proceedings. Many parents are not married, are divorced, or even if married may have conflicts of interest. The Court Assessment Program may be an appropriate entity within the State Court Administrator's Office to perform much of this information gathering and to serve as a liaison to the DPHHS. They have expressed interest in this area and would be a valuable resource in the development of any system. Without additional information, it is unknown how many additional resources would be necessary to implement representation for all indigent parents. The information cited above indicates that of the 9 counties over 25,000 in population, 6 are currently appointing at the initiation of the proceedings anyway (Flathead, Cascade, and Lake Counties are the exceptions), in addition to any parents involving an American Indian child in state district court.

Definition and Standards for Determination of Indigency

Issue C: The issue of a lack of definition of indigency is problematic in determining how many parents are involved in removal, placement, or termination proceedings. Many human services and public assistance programs use the federal poverty level to determine indigency, and the

***** As a potential model, the Committee may wish to review the Montana Department of Justice Child Protection Unit that assists county attorneys across the state with difficult cases or in rural areas where there are few cases.

judiciary could adopt a similar approach, take any eligibility for a public assistance program as evidence of indigency, or develop a new definition based specifically on the cost of providing quality legal counsel. Income and assets may not be the only factors determining the need for appointment of counsel (parent as minor, mental competency, etc.) that a proposal should take into consideration. The Washington State Office of Public Defense has a publication on the Criteria and Standards for Determining and Verifying Indigent Defense for reference.

Recommendation: Recommend that a definition of indigency and a standard for a determination of indigency be developed. Indigency may not be the only qualification for appointment of counsel and other areas may require appointment. The issue of a sliding fee scale may also need to be considered.

II. Representation for Children

Issues: If an indigent parent is appointed legal counsel, does the child also need legal counsel? Is appointment of a guardian ad litem sufficient if the guardian ad litem is not an attorney, or do children need both? Is the state adequately funding the current mandate for a guardian ad litem for each child alleged to be abused or neglected?

Recommendations:

1. Recommend that an accurate assessment be made of the cost to provide a guardian ad litem to each child alleged to be abused or neglected across the state.

2. Recommend that additional information on the number of children who may also need legal counsel is needed. It is important to note that 20 states appoint counsel in all cases of child abuse and neglect, and that is an issue that warrants attention in the development of a public defender system.

3. Recommend the development of standards for guardians ad litem (changes at the federal level now require training) and specify responsibilities when a public defender is also involved.

4. Recommend that consideration be made for specific training for child abuse and neglect cases for public defender staff.

III. Where Do Child Abuse and Neglect Cases Fit in a Public Defense System

Issues: Should the CASA/GAL program be included in a statewide public defender system or should it remain under the State Court Administrator? The Law and Justice Interim Committee is trying to determine what would constitute "public defender/appointed counsel" costs and what would constitute other administrative costs. As noted in the previous section, costs for court-appointed special advocates are set per case, regardless of how many children per case, and the amount of revenue from the state is set and does not cover all of the costs of the program. County in-kind services and nongovernmental donations fund the CASA/GAL program also. Guardians

.....State law (41-3-112, MCA) requires that the court shall appoint for any child alleged to be abused or neglected a guardian ad litem, if necessary at public expense. State law also provides authority for the court to appoint counsel for any indigent party (41-3-422, MCA).

ad litem are required to be appointed in all cases, but these services currently are not being fully funded by the state. The equity of this situation would be even more questionable if all indigent parents receive court-appointed counsel funded through a public defender system and the CASA/GAL system remains only a partially-funded state mandate staffed mainly by volunteers. Any proposal must address the equity between advocacy for children and representation for parents.

Recommendations:

1. Recommend to maintain the administration of the state CASA/GAL program and its specific role in the child abuse and neglect proceedings at the State Court Administrator's Office.
2. Specify that any costs for a public defender who participates on a treatment team be included as "public defender costs". It has been questioned whether the cost of a public defender participating in a treatment team in a treatment court should be a reimbursable public defender cost. Although the treatment team may not operate in a traditional adversarial model, if the public defender performs diligent representation and fulfills standards of professional responsibility toward the client, the costs for participation in that treatment team are legitimate costs that may save additional costs later and should be reimbursed by a public defender/appointed counsel model. If they require an alternative method, it is suggested that whatever is instituted include the development of an alternate reimbursement scheme to support the goal of diligent representation and treatment court.

IV. Quality of Representation and Other Issues

Issues: There are many issues illustrated by the following studies that must be considered in the development of any system of public defense and appointed counsel, especially in relation to child abuse and neglect proceedings or other specialized areas of law.

Recommendation: Of the "other issues" that are vital for development of any proposal to provide appointed counsel for children and parents in child abuse and neglect proceedings, the Committee supports the Law and Justice Interim Committee efforts specifically in the areas of reasonable caseloads and consistency and continuity in representation.

